

1 **Wendy R. Bemis (SBN 218432)**
2 **Heather N. Tanner (SBN 235672)**
3 **LAW OFFICES OF BEMIS & ASSOCIATES**
4 **140 Geary Street, 4th Floor**
5 **San Francisco, CA 94108**
6 **Telephone: (415) 367-4578**
7 **Facsimile: (415) 367-4579**

8 Attorneys for Plaintiff,
9 BERLIN LILLARD

10 **IN THE UNITED STATES DISTRICT COURT**

11 **FOR THE EASTERN DISTRICT OF CALIFORNIA**

12 Case No.: 2:08-CV-00719-GEB-KJM

13 **PLAINTIFF'S FIRST-AMENDED**
14 **COMPLAINT FOR DAMAGES FOR:**

15 BERLIN LILLARD, an individual;

16 Plaintiffs,

17 v.

18 STARBUCKS, Inc., a Washington Corporation
19 doing business in California; and DOES 1-100,
20 inclusive,

21 Defendants.

- 22 1. Wrongful Termination in Violation of Public Policy;
- 23 2. Violation of Government Code §12940, et seq. (Discrimination based on Disability);
- 24 3. Violation of Government Code §12940, et seq. (Discrimination based on Race);
- 25 4. Violation of Government Code § 12940, et seq. (Failure to Prevent Racial Harassment and Maintain a Work Environment Free From Such Harassment);
- 26 5. Violation of Government Code § 12940, et seq. (Disparate Impact Based On Race);
- 27 6. Violation of Government Code §12940, et seq. (Retaliation);
- 28 7. Violation of Government Code § 12940, et seq. (Hostile Work Environment);
8. Violation of Government Code § 12940, et seq. (Harassment);
9. Defamation;
10. Intentional Infliction of Emotional Distress; and
11. Negligent Infliction of Emotional Distress.

29 **DEMAND FOR JURY TRIAL**

30 **PUNITIVE DAMAGES REQUESTED**

31 *Lillard v. Starbucks*

32 Case No. 2:08-CV-00719-GEB-KJM
33 FIRST-AMENDED COMPLAINT

1 Plaintiff alleges:

2 **PARTIES**

3 1. Plaintiff, BERLIN LILLARD (“Plaintiff”) is an adult, African-American male, and at all
4 times relevant herein, was a resident of Bay Point, California. At all times relevant herein, Plaintiff
5 was also employed by the Starbucks located in Vallejo, California.

6 2. Defendant STARBUCKS, INC. (“Defendant STARBUCKS”) is a Washington
7 corporation duly authorized and conducting business in the State of California, and is therefore subject
8 to the jurisdiction of this Court.

9 3. Plaintiff is informed and believes, and thereon alleges, that at all times herein mentioned,
10 Defendants, and each of them, were the agents and employees of their codefendants and in doing the
11 things alleged in this complaint, were acting within the course and scope of such agency and
12 employment. Defendant STARBUCKS is the employer of co-defendants DOES 1 through 100, and
13 employs said co-defendants as a supervisor over Plaintiff; and therefore, Defendant STARBUCKS is
14 liable for the discriminatory and harassing acts conducted by its supervisors under the principles of
15 respondent superior.

16 4. Plaintiff is ignorant of the true names and capacities of defendants sued herein as DOES 1
17 through 100, inclusive; and therefore, sues these defendants by such fictitious names. Plaintiff will
18 amend this complaint to allege their true names and capacities when ascertained. Plaintiff is informed
19 and believes, and thereon alleges, that each of said fictitiously named defendants are responsible in
20 some manner for the occurrences herein alleged, and that Plaintiff’s injuries as herein alleged were
21 proximately caused by such unlawful conduct.

22 **JURISDICTION & VENUE**

23 5. Plaintiff brings this action pursuant to and under the provisions of the Fair Employment
24 and Housing Act, California Government Code §§ 12940, et seq. (“FEHA”); the California
25 Constitution, Article I, § 1; and other California common and statutory laws.

26 6. The amount in controversy exceeds the minimum jurisdictional threshold of this Court.
27

28 *Lillard v. Starbucks*

Case No. 2:08-CV-00719-GEB-KJM
FIRST-AMENDED COMPLAINT

1 7. At all times set forth hereinafter, Defendant STARBUCKS has employed 50 or more
2 employees for each working day in each of twenty or more calendar weeks in the current or preceding
3 calendar year and is otherwise subject to the provisions of FEHA and other applicable laws.

4 8. Defendant STARBUCKS is, and at all times relevant hereto, has been an “employer” as
5 defined by FEHA.

6 9. Jurisdiction is proper pursuant to the State of California, California Code of Civil
7 Procedure § 410.10.

8 10. Plaintiff is informed and believes, and thereon alleges, that witnesses and evidence
9 relevant to this case are located in Vallejo, California and at other locations in the State of California.

10 11. Plaintiff is informed and believes, and thereon alleges, that there is no alternative forum in
11 which Plaintiff could file this case without suffering prejudice to his civil and common law rights to be
12 free from unlawful discrimination, harassment, retaliation, and other wrongful conduct directed against
13 him.

14 12. Plaintiff is informed and believes, and thereon alleges, that the relative costs and burdens
15 to the parties herein favors the filing of this lawsuit in this Court, in that Defendant suffers no burden or
16 hardship by having to defend this case in this Court. However, Plaintiff would suffer severe and undue
17 burden and hardship if he were required to file in an alternative forum, if any there be. Such burden
18 and hardship on Plaintiff includes, but is not limited to, prohibitive monetary expenses for travel,
19 obtaining counsel in a different venue and/or jurisdiction, increased expenses to investigate and obtain
20 evidence and depose and interview witnesses.

21 13. State policy favors jurisdiction and venue in Solano County, California because the State
22 of California has a policy of protecting California residents and ensuring the applicability of the FEHA,
23 and other applicable California laws.

24 14. Venue is proper in this Court because the acts and events set forth in this Complaint
25 occurred in whole or in part in the Vallejo, California; and because Plaintiff’s place of employment
26 with Defendant STARBUCKS was located in Vallejo, California.

GENERAL FACTUAL ALLEGATIONS COMMON TO ALL CAUSES OF ACTION

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

15. Plaintiff re-alleges and incorporates herein by reference paragraphs 1 through 14, as though fully set forth herein.

16. From on or about November 7, 2005 until on or about January 9, 2007, Plaintiff worked for Defendant STARBUCKS as an assistant manager and a manager in training.

17. When Defendant STARBUCKS hired Plaintiff, Defendant STARBUCKS promised Plaintiff four things: (1) that if Plaintiff completed his training satisfactorily, he would receive a promotion to manager and a raise to coincide with that promotion, within eight months; (2) that Plaintiff would receive a store to manage within one year; (3) that after the initial training period, Plaintiff could transfer to a Starbucks store closer to his home in Bay Point, California; and (4) that Defendant STARBUCKS was a dynamic place to work with equal opportunities for minorities in management positions. Plaintiff accepted the position in reliance on Defendant STARBUCKS' promises.

18. In or around July 2006, Plaintiff completed Starbucks' eight month management training course. Plaintiff performed all tasks required of him and received positive performance reviews. Plaintiff's direct manager also recommended Plaintiff for a management position upon completion of the training program.

19. After Plaintiff's completion of the eight month training program for his promotion to manager, Plaintiff's manager recommended to Ms. Jessica Apple, the district manager, that Plaintiff receive his promotion as he was ready and had fulfilled all his requirements.

20. At all times relevant hereto, Plaintiff performed his duties as an assistant manager and manager in training well and without incident, receiving numerous good performance reviews and accolades in recognition for his performance.

21. Plaintiff did not receive his promised promotion even though the promise to promote Plaintiff was reaffirmed multiple times when Plaintiff questioned whether he would receive it. Plaintiff is informed and believes, and thereon alleges, that Defendant STARBUCKS had no intention of fulfilling its promises to promote him to the position of manager. Plaintiff is informed and believes, and

1 thereon alleges, that African Americans were not represented in management in the region in which
2 Plaintiff was employed. In fact, Plaintiff is informed and believes and there on alleges that there was
3 only one African American in his region in a position higher than his, and Defendant STARBUCKS
4 had no African American managers in Plaintiff's region. Plaintiff is informed and believes and thereon
5 alleges that African Americans were disciplined more severely and/or terminated for conduct that
6 similarly situated Caucasian coworkers engaged in and for which they were not disciplined and/or
7 terminated. Plaintiff is further informed and believes, and thereon alleges, in the Northern California
8 region where Plaintiff LILLARD worked, there were no African American managers. In fact, there
9 was only one African American in the whole region that had a position higher than assistant manager.
10 Plaintiff is informed and believes, and thereon alleges, Plaintiff was one of three African Americans
11 training for management in his region. All three were terminated after fulfilling Starbucks' training
12 requirements and before being promoted to manager.

13 22. Plaintiff is informed and believes and thereon alleges, that at all times during Plaintiff's
14 employment with Defendant STARBUCKS treated Plaintiff, and other African Americans, in a
15 discriminatory manner due to their race. Defendant STARBUCKS punished African Americans more
16 frequently and more harshly than their non-African American co-workers engaging in the same, similar
17 or more egregious conduct. Plaintiff is further informed and believes, and on that basis alleges, that
18 Defendant STARBUCKS also terminated African Americans (including Plaintiff) more frequently and
19 on the basis of their race than their non-African American co-workers.

20 23. Plaintiff is and was, at all times relevant herein, a diabetic. Diabetes is a physical
21 disability as defined by California Government Code §12926.1(c).

22 24. Understaffing and poor working conditions at Starbucks caused Defendant STARBUCKS
23 to require Plaintiff to work for multiple shifts at a time consisting of long hours, often unplanned,
24 causing complications with Plaintiff's health care. The stress resulting from the poor working
25 conditions and long, unplanned hours caused Plaintiff to become ill and his stress-related illness was
26 complicated and made life threatening by Plaintiff's diabetes, resulting in his doctor taking him out of
27

1 work in or around November 2006, with a return date of January 2, 2007.

2 25. Plaintiff applied for and received medical leave under the Family Medical Leave Act
3 (FMLA) for his doctor prescribed medical leave.

4 26. Although, Plaintiff was on medical leave, due to stress and diabetic complications,
5 Defendant STARBUCKS' managers and staff called him continuously at home urging Plaintiff to
6 return to work even though it was against his doctor's orders, in order to help Defendant STARBUCKS
7 deal with its short staffing issue. Plaintiff did not return to work against his doctor's orders.

8 27. During Plaintiff's medical leave, agents and managers from STARBUCKS defamed
9 Plaintiff by telling his co-workers and STARBUCKS' guests that Plaintiff was not really sick, but that
10 he had taken medical leave fraudulently to start his own business. In fact, Plaintiff is informed and
11 believes, and thereon alleges, that Defendant's district manager, Jessica Apple, informed several of
12 Plaintiff's coworkers and/or guests that Plaintiff was not sick, but required "personal time" to take care
13 of family issues. When Defendant and its agents and managers made said defamatory statements, they
14 knew and/or had reason to know said statements were not true because they had a note from Plaintiff's
15 doctor prescribing Plaintiff's leave and Defendant's approved said leave on that basis.

16 28. While Plaintiff was on medical leave, his wife went to Starbucks at the location where
17 Plaintiff was trained in Concord. Mr. John Smiley was the manager in charge of the store at the
18 Concord location and he trained Plaintiff. Mr. Smiley was present when Ms. Lillard ordered her drink.
19 Plaintiff was not present. Ms. Lillard ordered a coffee beverage at the drive through window from Mr.
20 Millward, a co-worker that was trained during the same time as Plaintiff. Ms. Lillard handed Mr.
21 Millward the money for the drink. Before Mr. Millward returned Ms. Lillard's change, Mr. Millward
22 suggested that Ms. Lillard use Plaintiff's employee discount for her purchase; he even pointed out the
23 Plaintiff's employee card was in the car and visible from the drive-through window. Ms. Lillard
24 accepted the discount which amounted to \$1.20.

25 29. Plaintiff returned to work, as scheduled on January 2, 2007. Several days prior to his
26 return to work, Plaintiff met with Ms. Jessica Apple, the area manager to discuss his return and turn in
27

28 *Lillard v. Starbucks*

Case No. 2:08-CV-00719-GEB-KJM
FIRST-AMENDED COMPLAINT

1 his paper work so that there were no delays in his return. During his conversation with Ms. Apple,
2 Plaintiff, again, asked about his promised promotion to management. Ms. Apple promised Plaintiff she
3 would discuss it with him shortly after his return.

4 30. On or about January 5, 2007, Plaintiff's manager instructed Plaintiff to meet with Ms.
5 Apple who was waiting in the lobby seating area in the middle of the store. Said meeting was very
6 public, as it was in the middle of the store during the after-lunch rush. After some small talk, Ms.
7 Apple, in a voice loud enough to be heard by customers, told Plaintiff that he was suspended for "an
8 improper use of his employee discount." Plaintiff was unaware of any use of his employee discount as
9 he was not present when Mr. Millward suggested its use. Ms. Apple indicated the company would do
10 an investigation.

11 31. Plaintiff is informed and believes, and thereon alleges, that no investigation, or no
12 adequate investigation into the use of Plaintiff's discount occurred. Neither Plaintiff nor Mrs. Lillard
13 were questioned about the use of Plaintiff's employee discount.

14 32. On or about January 8, 2007, Ms. Apple terminated Plaintiff for "the improper use of
15 employee discounts."

16 33. Plaintiff is informed and believes, and thereon alleges that Defendant's reason for
17 termination was pretextual as Defendant has no written policy about the use or improper use of
18 employee discounts. Plaintiff is further informed and believes, and on that basis alleges, that
19 Starbucks' employees using another person's employee discount was a wide-spread and accepted
20 practice in the stores. Plaintiff's own managers trained him and his co-workers to use other co-workers
21 employee' numbers whenever they wanted to give a discount, regardless of whether or not the co-
22 worker was actually in the store at the time. Plaintiff is further informed and believes, and on that basis
23 alleges, that Defendant STARBUCKS management staff taught and encouraged employees to use
24 employee discounts to "comp" customers that were their favorites, to resolve customer complaints or to
25 those whom they wanted to give a discount. Plaintiff noticed this same practice was used at every
26 store he visited in his region.

1 34. Plaintiff is informed and believes, and thereon alleges, that neither Mr. Millward nor Mr.
2 Smiley were disciplined and/or terminated, despite the event occurring at the store for which Mr.
3 Smiley was responsible and that Mr. Smiley was aware that the discount was being offered and despite
4 the fact that the discount was given at Mr. Millward's invitation and insistence. Both Mr. Millward and
5 Mr. Smiley are Caucasian. Plaintiff is informed and believes, and thereon alleges, that Mr. Millward
6 and Mr. Smiley are not disabled and have not taken FMLA leave.

7 35. Plaintiff is informed and believes, and on that basis alleges, that Defendant STARBUCKS
8 wrongfully terminated him, Defendant, its agents, and management staff, again, slandered Plaintiff
9 stating to co-workers at staff meetings, and to customers that he was terminated for theft. Plaintiff is
10 further informed and believes, and on that basis alleges, that at the time said slandering statements were
11 made, Defendant, and its agents, managers and employees had no reason to believe that said statement
12 was true and, in fact, had reason to believe that Plaintiff was *not* terminated for theft.

13 36. Plaintiff is informed and believes, and thereon alleges that Defendant's termination of
14 Plaintiff was wrongful, discriminatory and in violation of public policy. Plaintiff is further informed
15 and believes, and thereon alleges, that Defendant used the excuse "improper use of employee
16 discounts" as a pretext to hide its discriminatory motives for terminating Plaintiff.

17 37. Plaintiff is informed and believes and thereon alleges that Defendant, in fact, wrongfully
18 terminated Plaintiff due to his race, because Defendant STARBUCKS did not intend to promote an
19 African American male because of his race, because of Plaintiff's disability, in retaliation for Plaintiff
20 taking medical leave and not returning early despite Defendant's insistence, and in retaliation for
21 Plaintiff taking medical leave pursuant to Family Medical Leave Act.

22 38. Defendant STARBUCKS subjected Plaintiff to severe and pervasive harassment,
23 discrimination, and retaliation on the basis of his disability and his race and in retaliation for taking
24 FMLA leave during his employment. Such incidents include, but are not limited to, those events
25 enumerated below. The list of events, enumerated in Paragraph 21 of this Complaint and the other
26 events discussed herein, are merely those which Plaintiff has chosen to enumerate for purposes of

1 illustration. The list is not comprehensive and does not represent the only events of discrimination,
2 harassment, and otherwise unlawful behavior to which Plaintiff was subjected or which he witnessed.
3 Defendant has engaged in a pattern and practice of discriminatory, harassing, and otherwise unlawful
4 behavior. Plaintiff incorporates herein such conduct, both known and unknown, and reserves the right
5 to more specifically identify and prove additional unlawful acts.

6 39. The incidents of Defendant's harassment, discrimination and retaliation of Plaintiff, and
7 each of them, include, but are not limited to, the following:

- 8 a. Breaching its promise to Plaintiff and failing to promote Plaintiff to manager once
9 his training was complete and to give Plaintiff the coinciding raise;
- 10 b. Breaching its promise to Plaintiff and failing to assign Plaintiff to a store to manage;
- 11 c. Breaching its promise to Plaintiff to transfer Plaintiff to a store closer to Plaintiff's
12 home once Plaintiff's training was completed;
- 13 d. Requiring Plaintiff to work extra back-to-back shifts without giving Plaintiff notice;
- 14 e. Requiring Plaintiff to work unassisted by any management staff or any co-workers
15 to manage a Starbucks' location and by failing to send emergency coverage to assist
16 with the store's operation;
- 17 f. Unfairly punishing Plaintiff for conduct attributable to his Caucasian co-workers
18 and/or failing to punish the Caucasian co-workers. Examples of said discriminatory
19 application of discipline include, but are not limited to:
 - 20 i. On one occasion, Plaintiff was disciplined when his Caucasian manager left
21 the store in which Plaintiff was working, without telling Plaintiff. When the
22 Caucasian manager left the store, she left the safe open. She was not
23 disciplined. Plaintiff was disciplined for his manager's conduct;
 - 24 ii. On another occasion Plaintiff was required to work in the STARBUCKS at a
25 busy location, completely alone, without any employees or co-management
26 staff, for an entire day. Plaintiff called for help multiple times from his
27

1 Caucasian counterparts in management, and was refused help. The store was
2 especially busy due to a near-by event. The non-assisting managers were not
3 disciplined; however, Plaintiff was disciplined at the end of the day for his
4 store not being clean;

5 iii. After Mr. Millward insisted Ms. Lillard accept Plaintiff's employee discount
6 with her beverage order, neither Mr. Millward, nor his manager were
7 disciplined; however, Plaintiff was terminated for Mr. Millward's conduct.

8 g. Forcing Plaintiff to bring doctor's notes every time he was out sick and by not
9 requiring non-disabled co-workers to bring doctor's notes for every sick day used;

10 h. Defaming Plaintiff when he was out on medical leave;

11 i. Breaching Plaintiff's medical privacy rights and sharing Plaintiff's medical
12 information;

13 j. Harassing Plaintiff to come back into work while he was out on medical leave;

14 k. Wrongfully terminating Plaintiff in retaliation for taking FMLA leave and not
15 returning to work during his prescribed medical leave;

16 l. Defaming Plaintiff after his termination as to the cause of termination;

17
18 40. Defendant's aforesaid conduct was discriminatory and harassing and changed the terms
19 and conditions of Plaintiff's employment. Further, the aforesaid conduct created a hostile work
20 environment for Plaintiff.

21 41. As a result of the above-mentioned incidents of harassment, retaliation and otherwise
22 unlawful and outrageous conduct, Plaintiff has suffered severe and pervasive emotional distress and
23 will present evidence of the same at trial in this action.

24 42. Within the time provided by law, Plaintiff made a complaint to the California Department
25 of Fair Employment and Housing ("DFEH") against Defendant, and on or about March 28, 2007
26 Plaintiff received his Notice of Right to Sue.

1 43. On or about November 19, 2007, Defendant STARBUCKS breached California Labor
2 Code §432 and 1198.5(a) when Plaintiff requested, in writing, copies of each document he signed and
3 the ability to view his personnel file. Defendant STARBUCKS has failed and refused to produce said
4 documents or to allow Plaintiff to inspect his personnel file in violation of said statutes.

5
6 **FIRST CAUSE OF ACTION**
WRONGFUL TERMINATION IN VIOLATION OF PUBLIC POLICY

7 44. Plaintiff re-alleges and incorporates herein by reference paragraphs 1-43 as though fully
8 set forth herein.

9 45. At all times herein relevant, Plaintiff was employed by Defendant.

10 46. California has a fundamental, substantial, and well-established public policy as codified
11 and expressed in California Government Code §12940, et seq. (FEHA) against the retaliation and
12 termination of persons based solely on their race, their disability, and/or in retaliation for taking
13 authorized FMLA medical leave. Defendant violated California's fundamental public policy when it
14 terminated Plaintiff in retaliation for the foregoing.

15 47. Plaintiff suffered from discrimination, as alleged above and incorporated herein by
16 reference, throughout his employment with Defendant. Plaintiff complained to Defendant about the
17 harassment and discrimination that he suffered. Defendant failed and refused to investigate, or
18 properly investigate Plaintiff's complaints, but instead, retaliated against him for said complaints.

19 48. On or about January 8, 2007, Defendant terminated Plaintiff's employment.

20 49. Plaintiff is informed and believes and thereon alleges, Defendant' wrongfully terminated
21 Plaintiff, in that Defendant terminated him for an illegal reason. Plaintiff is further informed and
22 believes and thereon alleges, the termination was not based on Plaintiff's job performance, a justified
23 business necessity, or otherwise protected by California law. Plaintiff is informed and believes and
24 thereon alleges, that Defendant terminated Plaintiff because of his race, his disability and/or in
25 retaliation for Plaintiff's complaints of harassment and discrimination and/or in retaliation for taking
26 his authorized FMLA medical leave.

1 50. Defendant's conduct has caused Plaintiff injury, damage, loss and harm, including but not
2 limited to loss of income, humiliation, embarrassment, severe mental and emotional distress, and
3 discomfort, all of which amount to Plaintiff's damage which totals exceed the minimum jurisdiction of
4 this court, the precise amount to be proven at trial.

5 51. Defendant committed these acts herein alleged maliciously, fraudulently, and
6 oppressively with the wrongful intention of injuring Plaintiff, ad acted with an improper and evil
7 motive amounting to malice, in conscious disregard for Plaintiff's rights and thus an award of
8 exemplary and punitive damages is justified. Further the actions directed at Plaintiff were carried out
9 by supervising employees acting in a deliberate, callous and intentional manner in order to injure and
10 damage Plaintiff. Plaintiff is therefore entitled to recover and herein prays for punitive damages.

11 WHEREFORE, Plaintiff prays for judgment as hereinafter set forth.

12
13 **SECOND CAUSE OF ACTION**
14 **DISABILITY DISCRIMINATION**
15 **(DISPARATE TREATMENT)**
16 **CALIFORNIA GOVERNMENT CODE §12940 ET. SEQ**

17 52. Plaintiff re-alleges and incorporates herein by reference paragraphs 1-51 as though fully
18 set forth herein.

19 53. At all times herein mentioned, FEHA (California Government Code §12940 et seq.) was
20 in full force and effect and was binding upon Defendant. FEHA requires Defendant to refrain from
21 discrimination against, and harassment of, an employee on the basis of, among other things, disability.
22 Within the time provided by law, Plaintiff made a complaint to the California Department of Fair
23 Employment and Housing ("DFEH") and received his Notice of Right to Sue.

24 54. At all times during Plaintiff's employment with Defendant STARBUCKS, Plaintiff was
25 protected by California State law from discrimination, harassment, or termination based solely on, or
26 motivated by, disability. At all times during Plaintiff's employment with Defendant STARBUCKS,
27 Defendant knew of Plaintiff's disability that limited Plaintiff's ability to work in highly stressful

1 situations.

2 55. Plaintiff was able to work for Defendant STARBUCKS with reasonable accommodations
3 for his diabetic treatment.

4 56. In or around November 2006, Plaintiff's doctor ordered Plaintiff to take a temporary
5 medical leave to deal with a stress related condition which was complicated by Plaintiff's disability.

6 57. Defendant made numerous decisions which adversely affected Plaintiff in regards to the
7 terms, conditions and privileges of employment. Such adverse employment actions include, but are
8 certainly not limited to: a.) unjustifiably requiring Plaintiff to bring medical documentation for every
9 absence, while not requiring Plaintiff's non-disabled co-workers to do the same; b.) harassing Plaintiff
10 to come back to work early while Plaintiff was on doctor prescribed, and Defendant approved, medical
11 leave in order to deal with Defendant's under-staffed and poor working conditions; c.) by defaming
12 Plaintiff when he was on medical leave telling co-workers and customers that Plaintiff was faking his
13 illness and was really on leave to start a business; and d.) by retaliating against Plaintiff for taking
14 medical leave and wrongfully terminating him.

15 58. Plaintiff's disability and medical leave were motivating factors in Defendant's acts as
16 alleged above and incorporated herein by reference.

17 59. As a proximate and actual result of Defendant's discriminatory conduct, Plaintiff was
18 harmed. Defendant STARBUCKS' above-alleged conduct was extreme and outrageous and has caused
19 Plaintiff injury, damage, loss and harm, including but not limited to, loss of income, humiliation,
20 embarrassment, and severe mental and emotional distress, and discomfort, all which amount to
21 Plaintiffs' damage which totals in excess of the minimum jurisdiction of this court, the precise amount
22 to be proven at trial.

23 60. Defendant STARBUCKS' conduct was malicious and oppressive, in that it was conduct
24 carried on by the defendant in willful and conscious disregard of the Plaintiff's rights and subjected
25 Plaintiff to cruel and unjust hardship. Thus, an award of exemplary and punitive damages is justified.

26 61. As a result of Defendant STARBUCKS discriminatory acts as alleged herein, Plaintiff has
27

1 no complete or adequate remedy at law as Defendant continues to engage in said alleged wrongful
2 practices, therefore, Plaintiff requests, in addition to damages for past acts:

3 a) That Plaintiff be made whole and afforded all benefits attended thereto that
4 would have been afforded to Plaintiff but for said discrimination; and,

5 b) That Defendant STARBUCKS, its agents, managers, supervisors, employees,
6 and those acting in concert with Defendant be enjoined permanently from engaging in each of the
7 unlawful practices, polices, usages and customs set forth herein.

8 WHEREFORE, Plaintiff prays for judgment as hereinafter set forth.

9
10 **THIRD CAUSE OF ACTION**

11 **RACIAL DISCRIMINATION**

12 **(DISPARATE TREATMENT)**

13 **CALIFORNIA GOVERNMENT CODE §12940 ET. SEQ**

14 62. Plaintiff re-alleges and incorporates herein by reference paragraphs 1-61 as though fully
15 set forth herein.

16 63. At all times herein mentioned, FEHA (California Government Code §12940 et seq.) was
17 in full force and effect and was binding upon Defendant. FEHA requires Defendant to refrain from
18 discrimination against, and harassment of, an employee on the basis of, among other things, race, color,
19 or ethnicity. Within the time provided by law, Plaintiff made a complaint to the California Department
20 of Fair Employment and Housing (“DFEH”) and received his Notice of Right to Sue.

21 64. At all times during Plaintiff’s employment with Defendant STARBUCKS, Plaintiff was
22 protected by California State law from discrimination, harassment, or termination based solely on, or
23 motivated by, his race.

24 65. At all times during Plaintiff’s employment with Defendant STARBUCKS, Plaintiff was
25 protected under FEHA for discrimination on the basis of his race. Plaintiff is an African American.

26 66. Defendant made numerous decisions which adversely affected Plaintiff in regards to the
27 terms, conditions and privileges of employment. Such adverse employment actions include, but are
28 certainly, not limited to, each and every act alleged in Paragraph 40 above and incorporated herein by

1 reference.

2 67. Plaintiff's race was a motivating factor in the Defendant's acts as alleged above and
3 incorporated herein by reference.

4 68. As a proximate and actual result of Defendant's discriminatory conduct, Plaintiff was
5 harmed. Defendant STARBUCKS' above-alleged conduct was extreme and outrageous and has caused
6 Plaintiff injury, damage, loss and harm, including but not limited to, loss of income, humiliation,
7 embarrassment, and severe mental and emotional distress, and discomfort, all which amount to
8 Plaintiffs' damage which totals in excess of the minimum jurisdiction of this court, the precise amount
9 to be proven at trial.

10 69. Defendant STARBUCKS' conduct was malicious and oppressive, in that it was conduct
11 carried on by the defendant in willful and conscious disregard of the Plaintiff's rights and subjected
12 Plaintiff to cruel and unjust hardship. Thus, an award of exemplary and punitive damages is justified.

13 70. As a result of Defendant STARBUCKS discriminatory acts as alleged herein, Plaintiff has
14 no complete or adequate remedy at law as Defendant continues to engage in said alleged wrongful
15 practices, therefore, Plaintiff requests, in addition to damages for past acts:

16 a) That Plaintiff be made whole and afforded all benefits attended thereto that
17 would have been afforded to Plaintiff but for said discrimination; and,

18 b) That Defendant STARBUCKS, its agents, managers, supervisors, employees,
19 and those acting in concert with Defendant be enjoined permanently from engaging in each of the
20 unlawful practices, polices, usages and customs set forth herein.

21 WHEREFORE, Plaintiff prays for judgment as hereinafter set forth.

22
23 **FOURTH CAUSE OF ACTION**
24 **FAILURE TO PREVENT DISCRIMINATION OR HARRASSMENT**
CALIFORNIA GOVERNMENT CODE §12940(k)

25 71. Plaintiff re-alleges and incorporates herein by reference paragraphs 1-70 as though fully
26 set forth herein.

27 72. At all times herein mentioned, FEHA (California Government Code §12940 et seq.) was

28 *Lillard v. Starbucks*

Case No. 2:08-CV-00719-GEB-KJM
FIRST-AMENDED COMPLAINT

1 in full force and effect and was binding upon Defendant. FEHA requires Defendant to take all
2 reasonable steps to prevent discrimination, harassment and retaliation. Within the time provided by
3 law, Plaintiff made a complaint to the California Department of Fair Employment and Housing
4 (“DFEH”) and received his Notice of Right to Sue.

5 73. Defendant made numerous decisions which adversely affected Plaintiff in regards to the
6 terms, conditions and privileges of employment. Such adverse employment actions include, but are
7 certainly, not limited to, each and every act alleged in Paragraph 40 above and incorporated herein by
8 reference on the basis of Plaintiff’s race, disability, and FMLA leave.

9 74. Defendant STARBUCKS failed to take all reasonable steps to prevent the harassment,
10 discrimination, and retaliation of Plaintiff.

11 75. As a proximate and actual result of Defendant’s failure to prevent discriminatory,
12 harassing or retaliatory conduct, Plaintiff was harmed. Defendant STARBUCKS’ above-alleged
13 conduct was extreme and outrageous and has caused Plaintiff injury, damage, loss and harm, including
14 but not limited to, loss of income, humiliation, embarrassment, and severe mental and emotional
15 distress, and discomfort, all which amount to Plaintiffs’ damage which totals in excess of the minimum
16 jurisdiction of this court, the precise amount to be proven at trial.

17 76. Defendant STARBUCKS’ failure to take all reasonable steps necessary to prevent
18 harassment, discrimination and retaliation was malicious and oppressive, in that it was conduct carried
19 on by Defendant in willful and conscious disregard of Plaintiff’s rights and subjected Plaintiff to cruel
20 and unjust hardship. Thus, an award of exemplary and punitive damages is justified.

21 77. As a result of Defendant STARBUCKS discriminatory acts as alleged herein, Plaintiff has
22 no complete or adequate remedy at law as Defendant continues to engage in said alleged wrongful
23 practices, therefore, Plaintiff requests, in addition to damages for past acts:

24 a) That Plaintiff be made whole and afforded all benefits attended thereto that
25 would have been afforded to Plaintiff but for said failures to prevent discrimination, harassment and
26 retaliation; and,
27

1 b) That Defendant STARBUCKS, its agents, managers, supervisors, employees,
2 and those acting in concert with Defendant be enjoined permanently from engaging in each of the
3 unlawful practices, polices, usages and customs set forth herein.

4 WHEREFORE, Plaintiff prays for judgment as hereinafter set forth.
5

6 **FIFTH CAUSE OF ACTION**
7 **DISPARATE IMPACT**
8 **CALIFORNIA GOVERNMENT CODE 12940 (a)**

9 78. Plaintiff re-alleges and incorporates herein by reference paragraphs 1-77 as though fully
10 set forth herein.

11 79. At all times herein mentioned, FEHA (California Government Code §12940(a), et seq.)
12 was in full force and effect and was binding upon Defendant. FEHA requires Defendant
13 STARBUCKS to refrain from discrimination against, and harassment of, an employee on the basis of,
14 among other things, race, color, or ethnicity. Within the time provided by law, Plaintiff made a
15 complaint to the California Department of Fair Employment and Housing (“DFEH”) and received his
16 Notice of Right to Sue.

17 80. Defendant STARBUCKS had an employment practice of hiring individuals as assistant
18 managers while simultaneously training said employees for management positions. Said hiring and
19 promotional policy has a disproportionate adverse effect on African American applicants.

20 81. Plaintiff is an African American and therefore protected from the disparate impact of
21 Defendant STARBUCKS’ hiring and promotional policy.

22 82. As a proximate and actual result of Defendant’s discriminatory policy, Plaintiff was
23 harmed. Defendant STARBUCKS’ above-alleged conduct was extreme and outrageous and has caused
24 Plaintiff injury, damage, loss and harm, including but not limited to, loss of income, humiliation,
25 embarrassment, and severe mental and emotional distress, and discomfort, all which amount to
26 Plaintiffs’ damage which totals in excess of the minimum jurisdiction of this court, the precise amount
27 to be proven at trial.

28 83. Defendant STARBUCKS’ conduct was malicious and oppressive, in that it was conduct

1 carried on by the defendant in willful and conscious disregard of the Plaintiff's rights and subjected
2 Plaintiff to cruel and unjust hardship. Thus, an award of exemplary and punitive damages is justified.

3 84. As a result of Defendant STARBUCKS discriminatory policy as alleged above and
4 incorporated herein by reference, Plaintiff has no complete or adequate remedy at law as Defendant
5 continues to engage in said alleged wrongful practices, therefore, Plaintiff requests, in addition to
6 damages for past acts:

7 a) That Plaintiff be made whole and afforded all benefits attended thereto that would have
8 been afforded to Plaintiff but for said discriminatory policy; and,

9 b) That Defendant STARBUCKS, its agents, managers, supervisors, employees, and those
10 acting in concert with Defendant be enjoined permanently from engaging in each of the unlawful
11 practices, polices, usages and customs set forth herein.

12 WHEREFORE, Plaintiff prays for judgment as hereinafter set forth.

13
14 **FIFTH CAUSE OF ACTION**

15 **RETALIATION**

16 **CALIFORNIA GOVERNMENT CODE 12940(h)**

17 85. Plaintiff re-alleges and incorporates herein by reference paragraphs 1-84 as though fully
18 set forth herein.

19 86. At all times herein mentioned, FEHA (California Government Code §12940 et seq.) was
20 in full force and effect and was binding upon Defendant. FEHA requires Defendant to refrain from
21 retaliation against, an employee on the basis of, among other things, race and disability. Within the
22 time provided by law, Plaintiff made a complaint to the California Department of Fair Employment and
23 Housing ("DFEH") and received his Notice of Right to Sue.

24 87. Also at all times herein mentioned the Family Medical Leave Act (FMLA) was in full
25 force and effect and was binding upon Defendant. FMLA requires Defendant to refrain from retaliation
26 against an employee for taking FMLA leave.

27 88. Defendant STARBUCKS engaged in conduct that, taken as a whole, materially and
28 adversely affected the terms and conditions of Plaintiff's employment, including but not limited those

Lillard v. Starbucks

Case No. 2:08-CV-00719-GEB-KJM
FIRST-AMENDED COMPLAINT

1 acts included in Paragraph 40, incorporated herein by reference.

2 89. Plaintiff's race was a motivating factor in the Defendant's acts and failures to act as
3 alleged above and incorporated herein by reference. In addition, or in the alternative, Plaintiff's
4 disability and/or Plaintiff's taking FMLA leave were motivating factors for Defendant's acts or failures
5 to act which constitute adverse employment actions.

6 90. As a proximate and actual result of Defendant's retaliatory conduct, Plaintiff was harmed.
7 Defendant STARBUCKS' above-alleged conduct was extreme and outrageous and has caused Plaintiff
8 injury, damage, loss and harm, including but not limited to, loss of income, humiliation,
9 embarrassment, and severe mental and emotional distress, and discomfort, all which amount to
10 Plaintiffs' damage which totals in excess of the minimum jurisdiction of this court, the precise amount
11 to be proven at trial.

12 91. Defendant STARBUCKS' conduct was malicious and oppressive, in that it was conduct
13 carried on by the defendant in willful and conscious disregard of the Plaintiff's rights and subjected
14 Plaintiff to cruel and unjust hardship. Thus, an award of exemplary and punitive damages is justified.

15 92. As a result of Defendant STARBUCKS discriminatory acts as alleged herein, Plaintiff has
16 no complete or adequate remedy at law as Defendant continues to engage in said alleged wrongful
17 practices, therefore, Plaintiff requests, in addition to damages for past acts:

18 a) That Plaintiff be made whole and afforded all benefits attended thereto that
19 would have been afforded to Plaintiff but for said discrimination; and,

20 b) That Defendant STARBUCKS, its agents, managers, supervisors, employees,
21 and those acting in concert with Defendant be enjoined permanently from engaging in each of the
22 unlawful practices, polices, usages and customs set forth herein.

23 WHEREFORE, Plaintiff prays for judgment as hereinafter set forth.

24
25 ///

26 ///

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

SEVENTH CAUSE OF ACTION
HOSTILE WORK ENVIRONMENT
CALIFORNIA GOVERNMENT CODE 12940

93. Plaintiff re-alleges and incorporates herein by reference paragraphs 1-92 as though fully set forth herein.

94. At all times herein mentioned, FEHA (California Government Code §12940 et seq.) was in full force and effect and was binding upon Defendant. FEHA requires Defendant to take all reasonable steps to prevent discrimination, harassment and retaliation. Within the time provided by law, Plaintiff made a complaint to the California Department of Fair Employment and Housing (“DFEH”) and received his Notice of Right to Sue.

95. Plaintiff was subjected to harassment based on his disability at STARBUCKS, causing a hostile or abusive work environment. Said acts of harassment, include but are not limited to the acts mentioned in Paragraph 40 above and incorporated herein by reference.

96. Defendant STARBUCKS’ harassing conduct was severe and/or pervasive.

97. A reasonable person with a disability in Plaintiff’s circumstances would have considered the work environment to be hostile and/or abusive.

98. Plaintiff considered the work environment to be hostile and/or abusive and it had the purpose and effect of altering the conditions of Plaintiff’s employment and created an intimidating, hostile, abusive, and offensive working environment.

99. Defendant STARBUCKS’ supervisors not only engaged in the harassing conduct, but Defendant STARBUCKS’ agents and other supervisors knew or should have known of the conduct and failed to take immediate and appropriate corrective action.

100. As a proximate and actual result of Defendant’s harassment, Plaintiff was harmed. Defendant STARBUCKS’ above-alleged conduct was extreme and outrageous and has caused Plaintiff injury, damage, loss and harm, including but not limited to, loss of income, humiliation, embarrassment, and severe mental and emotional distress, and discomfort, all which amount to Plaintiffs’ damage which totals in excess of the minimum jurisdiction of this court, the precise amount

1 to be proven at trial.

2 101. Defendant STARBUCKS' conduct was malicious and oppressive, in that it was conduct
3 carried on by the defendant in willful and conscious disregard of the Plaintiff's rights and subjected
4 Plaintiff to cruel and unjust hardship. Thus, an award of exemplary and punitive damages is justified.

5 102. As a result of Defendant STARBUCKS harassment as alleged herein, Plaintiff has no
6 complete or adequate remedy at law as Defendant continues to engage in said alleged wrongful
7 practices, therefore, Plaintiff requests, in addition to damages for past acts:

8 a) That Plaintiff be made whole and afforded all benefits attended thereto that would have
9 been afforded to Plaintiff but for said harassment; and,

10 b) That Defendant STARBUCKS, its agents, managers, supervisors, employees, and those
11 acting in concert with Defendant be enjoined permanently from engaging in each of the unlawful
12 practices, polices, usages and customs set forth herein.

13 WHEREFORE, Plaintiff prays for judgment as hereinafter set forth.

14
15 **EIGHTH CAUSE OF ACTION**
16 **HARASSMENT**

17 103. Plaintiff re-alleges and incorporates herein by reference paragraphs 1-102 as though fully
18 set forth herein.

19 104. At all times herein mentioned, FEHA (California Government Code §12940 et seq.) was
20 in full force and effect and was binding upon Defendant. FEHA requires Defendant to refrain from
21 harassment of an employee on the basis of disability, among other things.

22 105. Defendant and its acts and failures to act alleged above and incorporated herein by
23 reference were harassment on the basis of disability as defined by the California Government Code
24 §12940, et seq.

25 106. Plaintiff was subjected to unwanted, harassing conduct because he was associated with a
26 protected status.

27 107. Defendant STARBUCKS' harassing conduct was so severe, widespread, and/or persistent

28 *Lillard v. Starbucks*

Case No. 2:08-CV-00719-GEB-KJM
FIRST-AMENDED COMPLAINT

1 that it altered the terms and conditions of employment, including but not limited to, depriving Plaintiff
2 of a "discrimination-free workplace" as required pursuant to 2 Cal. Code Reg. § 7286.5(f)(3) and
3 further created an abusive working environment.

4 108. Defendant STARBUCKS, its agents, and/or supervisors, having actual or reasonably
5 perceived authority over Plaintiff, engaged in said harassing conduct and/or further endorsed it by their
6 failure to act.

7 109. Defendant STARBUCKS, its agents and/or supervisors, knew or should have known of
8 the harassing conduct and failed to take immediate and appropriate corrective action.

9 110. As an actual and proximate result of Defendant's conduct and breaches of the duties owed
10 to Plaintiff, Plaintiff was damaged and suffered severe emotional distress, including embarrassment,
11 humiliation, indignity and anxiety. The exact amount of Plaintiff's damages will be proven at trial but
12 exceeds the minimal jurisdiction requirement of this court.

13 WHEREFORE, Plaintiff prays for judgment as hereinafter set forth.

14
15 **NINTH CAUSE OF ACTION**
16 **DEFAMATION**

17 111. Plaintiff re-alleges and incorporates herein by reference paragraphs 1-110 as though fully
18 set forth herein.

19 112. Defendant STARBUCKS, its agents, and/or supervisors made statements to Plaintiff's co-
20 workers and restaurant patrons about: a.) Plaintiff faking his FMLA leave in order to start a business;
21 b.) the reason for Plaintiff's termination (i.e., that it was theft); and, c) Plaintiff's termination being due
22 to Plaintiff misusing his employee discount in order to purchase an expensive coffee appliance for his
23 wife.

24 113. The persons to whom Defendant STARBUCKS and its management staff relayed the
25 aforesaid defamatory statements reasonably understood that the statements were about Plaintiff.

26 114. The persons to whom Defendant STARBUCKS and its management staff relayed the
27 aforesaid defamatory statements reasonably understood the statements to mean that Plaintiff had

1 committed a crime or crimes by defrauding his employer as to the basis for his FMLA leave and the
2 crime of theft.

3 115. The aforesaid statements were false.

4 116. Defendant STARBUCKS, its agents and/or supervisors failed to use reasonable care to
5 determine the truth or falsity of the statements.

6 117. As an actual and proximate result of Defendant STARBUCKS' wrongful conduct, Plaintiff
7 was damaged, by including but not limited to, harm to Plaintiff's trade, profession, or occupation;
8 expenses Plaintiff had to pay as a result of the defamatory statements; harm to Plaintiff's reputation;
9 and emotional distress, including shame, mortification, and hurt feelings.

10 WHEREFORE, Plaintiff prays for judgment as hereinafter set forth.

11 **TENTH CAUSE OF ACTION**
12 **INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS**

13 118. Plaintiff re-alleges and incorporates herein by reference paragraphs 1-117 as though fully
14 set forth herein.

15 119. At all times herein mentioned, FEHA (California Government Code §12940, et seq.) was
16 in full force and effect and was binding upon Defendant. FEHA requires Defendant to take all
17 reasonable steps to prevent discrimination, harassment and retaliation. Within the time provided by
18 law, Plaintiff made a complaint to the California Department of Fair Employment and Housing
19 ("DFEH") and received his Notice of Right to Sue.

20 120. Defendant engaged in the outrageous and unprivileged conduct alleged above and
21 incorporated herein by reference.

22 121. As a direct and proximate result of Defendant's outrageous, unprivileged, and extreme
23 conduct alleged in this Complaint, Plaintiff suffered severe emotional distress, including humiliation,
24 embarrassment, anxiety and indignity all to Plaintiff's general damage in an amount to be determined at
25 trial but in excess of the jurisdictional amount of this Court.

26 122. Defendant STARBUCKS' conduct was intentional and malicious. Said conduct was done
27

28 *Lillard v. Starbucks*

Case No. 2:08-CV-00719-GEB-KJM
FIRST-AMENDED COMPLAINT

1 for the purpose of causing Plaintiff to suffer humiliation, mental anguish, and emotional and physical
2 distress and was done with knowledge that Plaintiff's emotional and physical distress would thereby
3 increase. In failing to correct, prevent or refrain from said discriminatory and harassing conduct,
4 Defendant's conduct was malicious and oppressive, in that it was conduct carried on by the Defendant
5 in willful and conscious disregard of the Plaintiff's rights and subjected Plaintiff to cruel and unjust
6 hardship. Thus, an award of exemplary and punitive damages is justified as against Defendant
7 STARBUCKS

8 WHEREFORE, Plaintiffs, and each of them, pray for judgment as hereinafter set forth.

9
10 **ELEVENTH CAUSE OF ACTION**
NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS

11 123. Plaintiff re-alleges and incorporates herein by reference paragraphs 1-122 as though fully
12 set forth herein.

13 124. Defendant owed a duty of care to Plaintiff to provide Plaintiff with a discrimination-free
14 work environment and to further protect Plaintiff from discriminatory and harassing acts of Defendant,
15 its supervisors and/or agents.

16 125. Defendant breached its duty to Plaintiff by allowing, endorsing, failing to respond to
17 and/or to prevent harassment and discrimination against Plaintiff.

18 126. Defendant should have known that its failure to exercise due care in the performance of its
19 duties, alleged above and incorporated herein by reference, would cause Plaintiff severe emotional
20 distress. Such conduct, as alleged in paragraph 40, above, and incorporated herein by reference, was
21 conducted outside the expected and agreed upon course and/or scope of Plaintiff's employment with
22 Defendant STARBUCKS.

23 127. As an actual and proximate result of Defendant's conduct and breaches of the duties owed
24 to Plaintiff, Plaintiff was damaged and suffered severe emotional distress, including embarrassment,
25 humiliation, indignity and anxiety. The exact amount of Plaintiff's damages will be proven at trial.

26 WHEREFORE, Plaintiff prays for judgment as hereinafter set forth.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff makes the following demand:

- (a) That process be issued and served as provided by law, requiring Defendants, and each of them, to appear and answer or face judgment;
- (b) For general, special, actual, compensatory and/or nominal damages, as against both Defendants, in an amount to be determined at trial, but no less than \$2,000,000.00;
- (c) For punitive damages in an amount to be determined at trial sufficient to punish, penalize and/or deter Defendant STARBUCKS;
- (d) For costs and expenses of this litigation;
- (e) For reasonable attorneys' fees in accordance with California Code of Civil Procedure Section 1021.5 and California Government Code § 12940 et seq.;
- (g) For pre and post-judgment interest; and,
- (h) For all such other relief as this Court deems just and appropriate.

Dated: May 13, 2008

LAW OFFICES OF BEMIS & ASSOCIATES

WENDY R. BEMIS
Attorneys for Plaintiff
BERLIN LILLARD

///
///
///

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

PLAINTIFFS DEMAND TRIAL BY JURY.

Dated: May 13, 2008

LAW OFFICES OF BEMIS & ASSOCIATES



WENDY R. BEMIS
Attorneys for Plaintiff
BERLIN LILLARD