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10 Attorneys for Plaintiff

11 UNITED STATES DISTRICT COURT
12 NORTHERN DISTRICT OF NEW YORK

13 DUSTIN MALDONADO,
14 64 Pawling Avenue #2
15 Troy, NY 12180

16 Plaintiff,

17 v.

18 PANERA, LLC
19 6710 Clayton Road
20 St. Louis, MO 63117

21 Resident Agent:
22 Corporation Service Company
23 80 State Street
24 Albany, NY 12207

25 Defendant.

Civil No.

**COMPLAINT
JURY TRIAL DEMANDED**

26 Plaintiff, DUSTIN MALDONADO, by and through counsel, hereby files this Complaint alleging that Defendant, PANERA, LLC, discriminated on the basis of disability, subjected him to a discriminatory and hostile work environment, failed to make reasonable accommodations, and engaged in

¹ Mary C. Vargas concurrently files a motion seeking leave to participate *pro hac vice*.

1 disparate treatment and unlawful retaliation in violation of Title I of the
2 Americans with Disabilities Act, 42 U.S.C. § 12111 *et seq.*, and the New York
3 State Human Rights Law, N.Y. Exec. Law § 290 *et seq.* In support thereof, Mr.
4 Maldonado states as follows:

6 **PARTIES**

7 1. Dustin Maldonado resides at 64 Pawling Avenue #2, Troy, New
8 York. Mr. Maldonado was employed as an Assistant Manager for Panera,
9 LLC’s bakery-café located at 3700 Vestal Parkway E, Vestal, New York before
10 he was transferred to the Panera, LLC bakery-café at 65 Wolf Road, Colonie,
11 New York.

12 2. Panera, LLC (“Panera”) is a subsidiary of Panera Bread Company
13 and is headquartered at 6710 Clayton Road, St. Louis, Missouri. Panera, LLC
14 owns and operates 1,900 bakery-cafés throughout the United States and
15 Canada, including stores located at 3700 Vestal Parkway E, Vestal, New York
16 and 65 Wolf Road, Colonie, New York.

18 **JURISDICTION**

19 3. This Court has original jurisdiction over the subject matter of this
20 complaint pursuant to 28 U.S.C. §§ 1331 and 1343.

21 4. This Court also has jurisdiction over Mr. Maldonado’s state law
22 claims set forth in this complaint pursuant to its supplemental jurisdiction to
23 hear state law claims under 28 U.S.C. § 1367(a). Both the federal and state
24 claims alleged herein arose under a common nucleus of operative facts, the state
25 claims alleged herein arose under a common nucleus of operative facts, the state
26 action is so related to the federal claim that they form part of the same case or

1 controversy, and the actions would ordinarily be expected to be tried in one
2 judicial proceeding.

3 5. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b)
4 because (i) Defendant has sufficient contacts with this District to subject
5 Defendant to personal jurisdiction at the time this action is commenced; and (ii)
6 the acts and omissions giving rise to this Complaint occurred within this
7 District.
8

9 **PROCEDURAL REQUIREMENTS**

10 6. Plaintiff timely filed an administrative complaint with the United
11 States Equal Employment Opportunity Commission and with the New York
12 State Division of Human Rights in which he alleged the statutory violations
13 asserted herein.
14

15 7. Following investigation, the Division of Human Rights found
16 Probable Cause to believe PANERA, LLC engaged in the discriminatory
17 practices alleged.
18

19 8. On September 16, 2015, the Division on Human Rights granted
20 Mr. Maldonado's request for an Administrative Convenience Dismissal so that
21 he could pursue his claims before this Court. See Ex. 1.

22 9. On October 23, 2015, the United States Equal Employment
23 Opportunities Commission granted Mr. Maldonado's request for a right-to-sue
24 letter and issued a Notice of Right to Sue. See Ex. 2.
25

26 **FACTUAL ALLEGATIONS**

10. Dustin Maldonado is severely allergic to peanuts and has
experienced serious and terrifying anaphylactic reactions.

1 11. Mr. Maldonado has experienced an anaphylactic reaction to
2 peanuts that was so severe, he went into respiratory failure, required a
3 defibrillator and intubation and was kept in the ICU.

4 12. Anaphylaxis is a potentially fatal immune response that requires
5 immediate, emergency medical treatment.
6

7 13. Mr. Maldonado carries epinephrine auto-injectors that must be
8 immediately administered in the event he ingests peanut or begins experiencing
9 an allergic reaction.

10 14. Mr. Maldonado's allergies substantially limit him in the major life
11 activities, *inter alia*, of breathing and eating. Anaphylactic reactions involve
12 multiple body system reaction and failure, including in particular, critical
13 involvement of the immune system and circulatory system.
14

15 15. Mr. Maldonado's allergy is not a joke. Having nearly died from
16 exposure to peanuts – knowing what it feels like to lose the ability to breathe –
17 he fears coming into contact with nuts.

18 16. On or around November 15, 2011, Mr. Maldonado began working
19 at Panera, LLC's Café number 601133 in Vestal, New York ("Vestal Café") as
20 an Assistant Manager.
21

22 17. Mr. Maldonado's direct supervisor was General Manager Justin
23 Commane.

24 18. Defendant's management, including General Manager Commane,
25 and Panera employees were aware of the severity of Mr. Maldonado's allergies.
26

1 19. Defendant’s management was aware of Mr. Maldonado’s request
2 and need for reasonable accommodation, specifically that he not be assigned to
3 work with nuts or otherwise be exposed to nuts.

4 20. Panera, LLC’s management and employees used this information
5 about Mr. Maldonado to subject him to severe, pervasive, and dangerous
6 harassment based on disability.

7 21. The harassment was not only tolerated by management, *but led by*
8 *management.*

9 22. On multiple occasions, General Manager Justin Commene
10 threatened to expose or actually exposed Mr. Maldonado to peanuts.

11 23. On multiple occasions, employees threatened to or actually
12 exposed Mr. Maldonado to peanuts, incidents of which Panera management
13 were aware and which Panera management either took no steps to stop or
14 actually participated in.

15 24. For example, an assistant manager and employees tricked Mr.
16 Maldonado into eating cookies that contained nuts, while telling Mr.
17 Maldonado the cookies were nut-free. Mr. Maldonado required medication even
18 after rinsing the single bite out of his mouth.

19 25. On other occasions, employees and management laughed and told
20 Mr. Maldonado that they were going to give him a peanut bracelet for
21 Christmas.

22 26. On another occasion, management intentionally placed peanut
23 butter near the café’s office door “as a prank” on Mr. Maldonado.
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1 27. In November of 2013, General Manager Commane called Mr.
2 Maldonado into his office and told Mr. Maldonado that he and the staff had
3 made dinner for Mr. Maldonado. General Manager Commane instructed Mr.
4 Maldonado to put his hands out. When Mr. Maldonado complied, General
5 Manager Commane proceeded to fill Mr. Maldonado’s hands with Reese’s
6 Peanut Butter Cups.
7

8 28. Commene knew that Mr. Maldonado was likely to have an allergy
9 reaction to Reese’s Peanut Butter Cups because they contain peanut.

10 29. Mr. Maldonado began to feel the onset of an allergic reaction and
11 immediately washed and scrubbed his hands. General Manager Commane
12 accused Mr. Maldonado of spoiling the “joke.”
13

14 30. Panera’s manager taunted Mr. Maldonado that he was going to
15 give someone AIDS with his EpiPen.

16 31. Mr. Maldonado was afraid for his safety.

17 32. Immediately following the incident, Mr. Maldonado filed a
18 complaint with the Human Resources Department at Panera’s headquarters.
19

20 33. Panera’s Human Resources representative, Charlene Lambert, took
21 no corrective action and counseled Mr. Maldonado to have “more of a sense of
22 humor” about the situation.

23 34. Panera did nothing to stop the harassment with the result that the
24 harassment continued at dangerous and abusive levels.

25 35. In December 2013, pursuant to his duties as Assistant Manager,
26 Mr. Maldonado instructed another employee to do a task the employee did not
want to do. In a pattern that was to be repeated, the employee responded in front

1 of another Panera manager that he was going to poison Mr. Maldonado by
2 sneaking peanut butter into his coffee.

3 36. Management was aware of the conduct and did nothing to stop it.

4 37. Again in February 2014, another employee threatened to bring
5 cookies to the Café and trick Mr. Maldonado into eat them without telling him
6 they contained peanut.

7
8 38. In April 2014, when Panera introduced peanut butter smoothies,
9 General Manager Commane assigned Mr. Maldonado to teach the entire staff
10 how to make a peanut butter smoothie and laughed when Mr. Maldonado
11 expressed concern and discomfort about the assignment.

12
13 39. When Mr. Maldonado persisted with his complaints about the
14 harassment, Lambert referred the matter to District Manager, Charlie Roff, but
15 Mr. Roff never so much as responded to Mr. Maldonado's complaint.

16 40. Panera never interviewed Mr. Maldonado to investigate the serious
17 allegations in his complaint.

18 41. General Manager Commane sent texts and group messages in
19 violation of Panera's own confidentiality policies to Mr. Maldonado's
20 coworkers telling them that Mr. Maldonado had filed a complaint about them.

21
22 42. In the wake of Mr. Maldonado's complaint, Panera failed to take
23 prompt, effective or decisive remedial action to end the harassment, to protect
24 Mr. Maldonado, or to hold any management or employees responsible for the
25 abusive and harassing conduct.

26 43. To the contrary, upon information and belief, General Manager
Commane received a significant financial bonus within weeks after Mr.

1 Maldonado filed his complaint about the November 2013 incident in General
2 Manager Commane's office.

3 44. Panera held General Manager Commane up as an example of its
4 best management practices, tapping him to train Panera's managers through
5 Panera's Joint Venture Program. Commane also served as the Training General
6 Manager.
7

8 45. Upon information and belief, no disciplinary action was ever taken
9 against any of the employees or managers who harassed Mr. Maldonado.

10 46. Instead, Panera retaliated against Mr. Maldonado.

11 47. After Mr. Maldonado filed his complaint over the harassment at
12 the Vestal Café, he was forced to transfer to another store on a very short
13 timeline.
14

15 48. Mr. Maldonado objected to the transfer, but was required to
16 transfer anyway.

17 49. At the time he was forced to transfer to the Colonie Café more
18 than 120 miles from his home, Mr. Maldonado had no place to live.

19 50. At the time of the forced transfer, Panera claimed the transfer was
20 mandated because Mr. Maldonado had disclosed a relationship with another
21 employee.
22

23 51. However, other managers who were in relationships with
24 employees at the Vestal Café during the same period of time were not forced to
25 transfer.
26

52. Mr. Maldonado was not only transferred to the Colonie Café and
but also repeatedly written up and threatened with loss of his job after he filed

1 his complaint with the EEOC and the New York Division of Human Rights. He
2 had never been written up prior to filing a complaint.

3 53. Other managers who had not complained of discrimination were
4 not similarly treated.

5 54. The Division of Human Rights investigated Mr. Maldonado's
6 allegations and found Probable Cause to believe Panera discriminated against
7 Mr. Maldonado based on disability and then retaliated against him for having
8 filed a complaint.

9 55. At all times, Panera management was aware of the harassment and
10 discrimination but failed to take prompt or effective remedial action, and in fact
11 regularly participated in the conduct.

12 56. Management continued to make fun of Mr. Maldonado's allergy
13 and the fact that he filed a complaint, leaving Mr. Maldonado feeling
14 humiliated and unsafe.

15 57. Mr. Maldonado suffered harm as the result of Panera's conduct
16 including emotional harm, humiliation, distress, expenses related to transfer,
17 and lost opportunities for advancement.

18 58. In August 2015, because of Panera's discriminatory conduct, Mr.
19 Maldonado left employment with Panera.

20 59. General Manager Commane is still employed by Panera as a
21 manager, is still training managers for Panera, and upon information and belief
22 has been tapped for promotion to District Manager.

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COUNT I
AMERICANS WITH DISABILITIES ACT, 42 U.S.C. § 12111 *et seq.*
(Against Defendant Panera, LLC)

60. Plaintiff incorporates by reference the allegations of paragraphs 1 through 59 above.

61. Mr. Maldonado has a severe allergy to peanuts, in addition to allergies to soy, pistachios, cashews, and sulfites. When Mr. Maldonado ingests peanuts, his body has a dangerous and immediate immune reaction that if untreated will causes an irreversible drop in blood pressure leading to death.

62. Plaintiff is an individual with a disability because he is substantially limited in the major life activities of, *inter alia*, breathing and eating. When exposed to peanuts, Plaintiff has anaphylactic reactions that are severe and potentially fatal. Anaphylactic reactions such as Mr. Maldonado's by definition involve multiple body systems including his immune system, his circulatory system, his digestive system, and his respiratory system.

63. At all times relevant, Mr. Maldonado was able to perform the essential functions of the job and was qualified to work as an Assistant Manager for Defendant.

64. Defendant is an employer within the meaning of the Act. Upon information and belief it has more than 1,000 employees.

65. Defendant, its managers and employees, subjected Mr. Maldonado to pervasive and severe harassment and intentional discrimination on the basis of disability creating a dangerous and hostile environment, with malice, reckless indifference, and deliberate indifference.

1 66. The misconduct was sufficiently severe and pervasive so as to alter
2 the conditions of the work environment, and included repeated threats of
3 physical harm and humiliation that resulted in what was objectively a hostile
4 workplace environment.

5 67. Mr. Maldonado perceived the work environment as hostile and
6 abusive. The conduct was repeated, serious, humiliating, and terrifying causing
7 interference with Mr. Maldonado's work and causing psychological harm. Mr.
8 Maldonado was repeatedly exposed to threats of physical harm. Management
9 on more than one occasion deliberately exposed Mr. Maldonado in a way that
10 was known to be potentially fatal for Mr. Maldonado.

11 68. Defendant failed to take corrective action or took ineffective action
12 after Mr. Maldonado complained to Panera headquarters about the
13 discrimination.

14 69. Defendant retaliated against Mr. Maldonado by forcing him to
15 transfer, by singling him out for punishment and by threatening him with loss of
16 employment.

17 70. Panera subjected Mr. Maldonado to disparate treatment and failed
18 to make reasonable accommodations for his disability.

19 71. Mr. Maldonado suffered injury as the result of Defendant's
20 conduct. He experienced humiliation, fear, and psychological harm, physical
21 symptoms, and damages arising from discrimination and retaliation.

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COUNT II
New York State Human Rights Law
(Against Defendant Panera, LLC)

72. Plaintiff incorporates by reference the allegations of paragraphs 1 through 71 above.

73. Mr. Maldonado has a severe allergy to peanuts, in addition to allergies to soy, pistachios, cashews, and sulfites. When Mr. Maldonado ingests peanuts, his body has a dangerous and immediate immune reaction that if untreated will causes an irreversible drop in blood pressure leading to death.

74. Plaintiff is an individual with a disability because he is substantially limited in the major life activities of, *inter alia*, breathing and eating. When exposed to peanuts, Plaintiff has anaphylactic reactions that are severe and potentially fatal. Anaphylactic reactions such as Mr. Maldonado's by definition involve multiple body systems including his immune system, his circulatory system, his digestive system, and his respiratory system.

75. At all times relevant, Mr. Maldonado was able to perform the essential functions of the job and was qualified to work as an Assistant Manager for Defendant.

76. Defendant Panera, LLC is an employer within the meaning of the act. Upon information and belief, Panera, LLC has more than 1,000 employees.

77. Mr. Maldonado was exposed to a hostile work environment and suffered adverse employment action.

78. The misconduct was sufficiently severe and pervasive so as to alter the conditions of the work environment, and included repeated threats of

1 physical harm and humiliation that resulted in what was objectively a hostile
2 workplace environment.

3 79. Mr. Maldonado perceived the work environment as hostile and
4 abusive. The conduct was repeated, serious, humiliating, and terrifying causing
5 interference with Mr. Maldonado's work and causing psychological harm. Mr.
6 Maldonado was repeatedly exposed to threats of physical harm. Management
7 on more than one occasion deliberately exposed Mr. Maldonado in a way that
8 was known to be potentially fatal for Mr. Maldonado.
9

10 80. Defendant harassed and discriminated against Mr. Maldonado on
11 the basis of disability and retaliated against him for complaining about the
12 hostile and unsafe environment.
13

14 81. Panera subjected Mr. Maldonado to disparate treatment and failed
15 to make reasonable accommodations for his disability.

16 82. Defendant engaged in intentional discrimination, harassment, and
17 retaliation with malice, reckless indifference, and deliberate indifference.
18

19 83. Mr. Maldonado was injured as the result of Defendant's conduct.
20 He experienced fear, humiliation, and threats of physical harm as well as
21 symptoms of physical injury, and other damages.

22 RELIEF

23 WHEREFORE, Plaintiff respectfully requests that this Court provide the
24 following relief, *inter alia*, as permitted by law:
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26

1 (a) A declaration that Defendant's policies, procedures, and practices
2 have subjected Plaintiff to discrimination in violation of Title I of the
3 Americans with Disabilities Act and the New York State Human Rights Law;

4 (b) Compensatory damages;

5 (c) Equitable relief;

6 (d) Punitive damages;

7 (e) Reasonable attorneys' fees and costs;

8 (f) All other necessary and appropriate relief at law and equity.
9

10
11 **JURY DEMAND**

12
13 Plaintiff through his undersigned attorneys, hereby demands a trial by
14 jury on all issues so triable pursuant to Federal Rule of Civil Procedure 38.
15

16
17 DATED this 12th day of November, 2015.

18 STEIN & VARGAS, LLP

19
20 By: /s/ Michael S. Stein

21 Michael S. Stein
22 Mary C. Vargas*
23 STEIN & VARGAS, LLP
24 5100 Buckeystown Pike, Suite 250
25 Frederick, MD 21704
26 (240)793-3185 telephone

Attorneys for Plaintiff

ATTORNEY CERTIFICATE OF SERVICE

I hereby certify that on November 12, 2015, I have made service of the foregoing on the party/ies listed below in the manner indicated:

Vincent Polsinelli
18 Corporate Wood Blvd
Third Floor
Londonville, NY 12211

- U.S. Mail
- Facsimile
- Hand Delivery
- Overnight Courier
- Email
- Electronically via USDC CM/ECF system

DATED this 12th day of November, 2015.

/s/ Michael S. Stein
Michael S. Stein
Attorney for Plaintiff