

1 HELMER • FRIEDMAN, LLP  
Gregory D. Helmer, P.C. (S.B. #150184)  
2 Andrew H. Friedman, P.C. (S.B. #153166)  
Kenneth A. Helmer (S.B. #193366)  
3 723 Ocean Front Walk  
Venice, California 90291  
4 Telephone: (310) 396-7714  
Facsimile: (310) 396-9215

5  
6 Attorneys for Plaintiff  
ERIKA FRACTIOUS

CONFIRMED COPY  
OF ORIGINAL FILE  
Los Angeles Superior Court

NOV 28 2005

John A. C. [Signature] Executive Officer/Clerk  
By [Signature] Deputy  
D.M. Smith

7  
8 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
9 FOR THE COUNTY OF LOS ANGELES, CENTRAL DISTRICT

10  
11 ERIKA FRACTIOUS, )  
12 Plaintiff, )  
13 v. )  
14 GAB ROBINS NORTH AMERICA, INC., a )  
corporation, GAB ROBINS RISK )  
15 MANAGEMENT SERVICES, INC., a )  
corporation, TAMMY HOLT, an individual, )  
16 and DOES 1 through 50, inclusive, )  
17 Defendants. )

Case No. BC343600

**COMPLAINT FOR DAMAGES:**

- (1) VIOLATION OF GOVERNMENT  
CODE SECTION 12945 (FEHA)  
[Failure to Provide Pregnancy Disability  
Leave, Failure to Reinstate, Failure to  
Provide Reasonable Accommodations,  
Failure to Provide Notice and Other  
Unlawful Employment Practices  
Pertaining to Pregnancy, Childbirth and  
Related Medical Conditions]
- (2) UNLAWFUL RETALIATION (FEHA)  
[Cal. Gov't Code § 12945; 2 Cal. Regs  
§7291.14; Cal. Gov't Code § 12940(h)]
- (3) VIOLATION OF GOVERNMENT  
CODE SECTION 12940(a) (FEHA)  
[Discrimination Based on Sex,  
Pregnancy, Childbirth, Medical  
Conditions Related to Pregnancy or  
Childbirth];
- (4) VIOLATION OF GOVERNMENT  
CODE SECTION 12940(j) (FEHA)  
[Harassment Based on Sex, Pregnancy,  
Childbirth, Medical Conditions Related  
to Pregnancy or Childbirth];

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

- (5) WRONGFUL TERMINATION AND OTHER ADVERSE EMPLOYMENT ACTIONS IN VIOLATION OF PUBLIC POLICY;
- (6) DEFAMATION;
- (7) INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS;
- (8) NEGLIGENCE INFLICTION OF EMOTIONAL DISTRESS;

**DEMAND FOR TRIAL BY JURY**

Plaintiff ERIKA FRACTIOUS (hereinafter "MS. FRACTIOUS" or "PLAINTIFF"), as an individual, complains and alleges as follows:

**INTRODUCTION**

1. In this case, plaintiff ERIKA FRACTIOUS alleges, inter alia, that while employed by GAB ROBINS NORTH AMERICA, INC. and defendant GAB ROBINS RISK MANAGEMENT SERVICES, INC. (hereinafter "GAB ROBINS" and/or the "COMPANY"), she suffered through an abnormal pregnancy and extremely premature childbirth. While she was out on pregnancy-related disability leave, her immediate supervisor, defendant Tammy Holt spread false rumors about her work performance and that she had been taking illegal drugs. Defendant GAB ROBBINS failed to accommodate her disability leave, and fired MS. FRACTIOUS for being pregnant, for requesting and taking pregnancy-related disability leave, and for purportedly taking illegal drugs (a false rumor). GAB ROBINS also retaliated against MS. FRACTIOUS for complaining about unlawful wage practices. As a result of GAB ROBBINS wrongful conduct, MS. FRACTIOUS has sustained physical injury, and substantial economic and emotional distress damages.



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

6. MS. FRACTIOUS is informed and believes, and thereon alleges, that defendant TAMMY HOLT (hereinafter "HOLT") is an individual who, at all relevant times herein mentioned, was employed by the COMPANY and held supervisory authority over MS. FRACTIOUS. MS. FRACTIOUS is informed and believes, and thereon alleges that defendant HOLT resides and, at all relevant times herein mentioned, resided in Los Angeles County.

7. The true names and capacities, whether corporate, associate, individual or otherwise of defendants DOES 1 through 50, inclusive, are unknown to MS. FRACTIOUS, who therefore sues said defendants by such fictitious names. Each of the defendants designated herein as a DOE is negligently or otherwise legally responsible in some manner for the events and happenings herein referred to and caused injuries and damages proximately thereby to MS. FRACTIOUS, as herein alleged. MS. FRACTIOUS will seek leave of Court to amend this Complaint to show their names and capacities when the same have been ascertained.

8. At all times herein mentioned, defendants, and each of them, were the agents, representatives, employees, successors and/or assigns, each of the other, and at all times pertinent hereto were acting within the course and scope of their authority as such agents, representatives, employees, successors and/or assigns and acting on behalf of, under the authority of, and subject to the control of each other.

9. The parties to this proceeding entered into a tolling agreement, which tolled any and all statutes of limitation, periods to exhaust administrative remedies, and other applicable time periods relating to the claims asserted by MS. FRACTIOUS herein. Pursuant to the agreement, such time periods commenced to be tolled on May 9, 2005 and continued to be tolled as of the date this Complaint was filed. Under the terms of the agreement, the applicable time periods will continue to be tolled for a period of 90 days following October 28, 2005 (when defendant GAB Robins provided written notice to terminate the agreement). (A true and correct copy of the tolling

1 agreement is attached hereto as Exhibit "A").

2  
3 **FACTS COMMON TO ALL CAUSES OF ACTION**  
4

5 10. On or about March 8, 2004, MS. FRACTIOUS was hired by defendant GAB  
6 ROBINS as a claims assistant. Defendant GAB ROBINS is huge national and international  
7 conglomerate. Among other things, it provides loss and risk adjusting services for property, casualty  
8 and workers' compensation insurance claims.

9  
10 11. At the time of her hire, MS. FRACTIOUS was pregnant with her first child,  
11 who was due to be born on August 20, 2004.

12  
13 12. Upon her hire, MR. FRACTIOUS readily disclosed her pregnancy to her co-  
14 workers. Shortly thereafter, she disclosed her pregnancy to several of her supervisors, including  
15 Jandi Steele (one of the unit supervisors), Craig Howell (Vice President) and Phyllis Hawkins. None  
16 of MS. FRACTIOUS' supervisors, however, ever advised MS. FRACTIOUS of her rights relating to  
17 pregnancy disability leave or accommodation.

18  
19 13. During her pregnancy, MS. FRACTIOUS was required to attend regularly  
20 scheduled medical appointments related to her pregnancy and childbirth. MS. FRACTIOUS  
21 consistently notified her supervisors, including Jandi Steele and Phyllis Hawkins, of her  
22 appointments, and otherwise followed COMPANY protocol and took reasonable steps to notify the  
23 COMPANY of her absences. When she was forced to miss time at work due to her pregnancy-  
24 related appointments, MS. FRACTIOUS (who was an hourly non-exempt employee) was always  
25 permitted to make up the time. If she missed an hour of work, for example, she would work an extra  
26 hour before leaving for the day in order to avoid losing the income.

1           14.     In mid-May 2004, Ms. FRACTIOUS, while at work, began experiencing sharp  
2 pains in her abdomen. Terrified, she informed her supervisor, Phyllis Hawkins, of her condition and  
3 called her doctor. Her doctor advised her to immediately check in to Queen of the Valley Hospital –  
4 a hospital that is equipped to handle high-risk pregnancies. MS. FRACTIOUS advised Ms. Hawkins  
5 of her doctor’s instructions and left work. When she arrived at the hospital, an examination and  
6 several tests were conducted to determine if there would have to be an early delivery. After several  
7 hours of tests, MS. FRACTIOUS was advised to go home and rest for the duration of the day. MS.  
8 FRACTIOUS contacted Ms. Hawkins, told her about the hospital visit, and notified her that she  
9 would return to work the next day pursuant to her doctor’s instructions.

10  
11           15.     On or about June 28, 2004, MS. FRACTIOUS’ co-workers threw a baby  
12 shower for her in the office. The shower had been announced in an e-mail that had been circulating  
13 throughout the workplace.

14  
15           16.     On or about June 29, 2004, MS. FRACTIOUS, who was, by then, visibly and  
16 pronouncedly pregnant (she was into her third trimester), returned from one of her doctors’  
17 appointments and was confronted, in an extremely hostile manner, by someone she never even met  
18 before – defendant TAMMY HOLT. Defendant HOLT informed MS. FRACTIOUS that she was  
19 her new supervisor. In a raised voice, defendant HOLT then publicly berated MS. FRACTIOUS for  
20 taking such a long doctors’ appointment and demanded that she produce a note. MS. FRACTIOUS  
21 immediately provided defendant HOLT with documentation, which verified that she had attended a  
22 pregnancy-related medical appointment and identified her physicians as obstetricians and  
23 gynecologists. Defendant HOLT, however, was undeterred, and continued to berate and chastise  
24 MS. FRACTIOUS about the length of the appointment. In direct retaliation, she also notified MS.  
25 FRACTIOUS that she would be prohibited from making up the missed time (as she had previously  
26 been permitted to do). In effect, defendant HOLT was punishing MS. FRACTIOUS for attending a  
27 pregnancy-related medical appointment. MS. FRACTIOUS was shocked, upset and humiliated. Her  
28 co-workers attempted to console her, particularly in light of the complications she had been

1 experiencing with her pregnancy.

2  
3 17. On or about June 29, 2004, MS. FRACTIOUS complained to supervisor Jandi  
4 Steele that defendant HOLT was punishing her and had retaliated against her by refusing to allow her  
5 to make up the time she lost as a result of attending her pregnancy-related medical appointment.

6  
7 18. On or about July 7, 2004, MS. FRACTIOUS had an appointment with her  
8 Obstetrician/Gynecologist. The doctor conducted some tests and found high amounts of protein in  
9 MS. FRACTIOUS' urine samples. She also took some external measurements of MS.  
10 FRACTIOUS' abdomen and expressed her concern that the fetus was not growing correctly. She  
11 then arranged for MS. FRACTIOUS to undergo further lab testing at another facility and gave her a  
12 Medical Leave of Absence slip, which placed her on a one week medical leave that "may be  
13 extended."

14  
15 19. After undergoing a battery of diagnostic examinations and tests on or about  
16 July 7, 2004, MS. FRACTIOUS stopped by the GAB ROBINS office and personally hand-delivered  
17 the Medical Leave of Absence form directly to defendant HOLT. MS. FRACTIOUS explained that  
18 she was suffering from complications related to her pregnancy, that there may be problems with her  
19 fetus, and that she was undergoing extensive testing. She also told defendant HOLT that the doctors  
20 would not be able to determine if or when she would be able to return to work until they received  
21 and reviewed the test results. Despite being placed on notice, neither defendant HOLT nor anyone  
22 else at the COMPANY ever notified MS. FRACTIOUS of her right to request a leave of absence for  
23 pregnancy disability for a period of up to four months, her right to a reasonable accommodation or  
24 any of her other pregnancy-related rights. Nor was there any notification of rights posted either in a  
25 conspicuous place in the workplace or in the employee handbook.

26 //

27 //

28 //

1           20.     On or about July 9, 2004, MS. FRACTIOUS received a telephone call from  
2 her OBGYN. The doctor informed MS. FRACTIOUS that the test results were abnormal and  
3 advised her to proceed immediately to Queen of the Valley Hospital for further blood work, due to,  
4 among other things, abnormal Red Blood Cell (“RBC”), Hemoglobin, and Platelet (“PLT”) counts.  
5 Terrified, MS. FRACTIOUS rushed to the hospital, where hospital medical personnel continued to  
6 monitor her. Her test results continued to show, among other things, dropping RBC, Hemoglobin  
7 and PLT counts, elevated levels of proteins, and high blood pressure, all of which indicated risks of  
8 potentially serious conditions and complications. She was also diagnosed with a bacterial infection.

9  
10           21.     On or about the morning of July 10, 2004, the delivery physician determined  
11 that it was medically necessary, for the health of both MS. FRACTIOUS and her fetus, to induce  
12 labor.

13  
14           22.     At approximately 2:00 p.m. on July 11, 2004 – six weeks before her scheduled  
15 delivery date – MS. FRACTIOUS gave birth to her son, Anthony, who weighed only 4 pounds at  
16 birth. Because the birth was so premature, Anthony was taken to the Newborn Intensive Care Unit  
17 (“NICU”), and remained there for twelve days. NICU personnel performed a multitude of tests on  
18 Anthony and kept him on an incubator and assisted breathing device. They also considered inserting  
19 a tube in his stomach to help nourish him. MS. FRACTIOUS was relocated to a recovery room  
20 closer to her son, where she, herself, was monitored for several days.

21  
22           23.     Immediately after MS. FRACTIOUS’ newly born son was taken to NICU,  
23 defendant HOLT called MS. FRACTIOUS in her recovery room. In a rude and abrupt voice  
24 (expressing no concern for MS. FRACTIOUS or the health of her baby), defendant HOLT demanded  
25 to know when MS. FRACTIOUS would be returning to work. Feeling pressured, MS.  
26 FRACTIOUS, relying on her lay understanding and memory that all women get a six-week check up  
27 following childbirth and that six weeks was a customary recovery period, responded: “I need at least  
28 my 6 weeks.” At that point, the conversation ended. Defendant HOLT never calculated a return-to-

1 work date and never advised MS. FRACTIOUS of her right to take up to a four-month pregnancy  
2 disability leave, her right to a reasonable accommodation or any of her other pregnancy-related  
3 rights.

4  
5 24. On or about July 14, 2004, MS. FRACTIOUS was finally discharged from the  
6 hospital with instructions from her doctor to remain on state disability while recovering and to return  
7 for a follow-up examination on August 24, 2004 (her "six-week" appointment). Although MS.  
8 FRACTIOUS, herself, was discharged from the hospital, she continued to stay there around the clock  
9 out of fear for her son's safety.

10  
11 25. During MS. FRACTIOUS' pregnancy disability leave, defendant HOLT  
12 continued a systematic pattern of retaliatory conduct, including, without limitation, the following:

13  
14 A. Despite a record of solid performance and positive feedback from her previous  
15 supervisors, MS. FRACTIOUS learned that defendant HOLT (who had  
16 literally only supervised her for less than two weeks) had been criticizing her  
17 in front of her co-workers;

18  
19 B. Defendant HOLT and GAB ROBINS began interviewing applicants to replace  
20 MS. FRACTIOUS;

21  
22 C. Approximately two weeks prior to MS. FRACTIOUS' six-week doctor's  
23 appointment on August 24, 2004, Defendants permanently replaced MS.  
24 FRACTIOUS with another employee from her unit;

25  
26 D. Defendant HOLT spread false rumors that MS. FRACTIOUS had been taking  
27 illegal drugs.  
28

1           26.     In early July 2004, at the very beginning of her pregnancy disability leave,  
2 MS. FRACTIOUS' supervisor, Phyllis Hawkins, purportedly acting on behalf of GAB ROBINS,  
3 hired MS. FRACTIOUS' boyfriend (Marco Rodriguez) and her cousin (Ronelle Fuqua) to work on a  
4 short-term project, cleaning up and filing mail. Ms. Hawkins had met Mr. Rodriguez and Mr. Fuqua  
5 at a baby shower that was thrown for MS. FRACTIOUS on or about June 28, 2004. At the end of  
6 their first week of employment, Mr. Rodriguez and Mr. Fuqua were paid in cash by Ms. Hawkins.  
7 At the end of their second week of employment, Ms. Hawkins failed to pay their wages when they  
8 were due. When they finally did receive a paycheck on July 19, 2004, they were surprised to learn  
9 that the checks were not written by the COMPANY, but instead by an individual named Robert  
10 Brown (an individual apparently associated personally with Phyllis Hawkins). Moreover, after  
11 depositing the checks into their respective accounts, both Mr. Rodriguez and Mr. Fuqua discovered  
12 that both of their checks had been cancelled, causing both of their accounts to be overdrawn.

13  
14           27.     During her pregnancy disability leave, MS. FRACTIOUS left several  
15 voicemail messages for Ms. Hawkins, complaining about the COMPANY's failure to pay wages to  
16 Mr. Rodriguez and Mr. Fuqua. Ms. Hawkins, however, refused to respond to any of MS.  
17 FRACTIOUS' complaints.

18  
19           28.     On or about July 27, 2004, MS. FRACTIOUS went to the Ontario office and  
20 personally met with her supervisor, Jandi Steele. MS. FRACTIOUS reiterated that she intended to  
21 return to work. She notified Ms. Steele that her six-week doctor's appointment was on August 24,  
22 2004 and that she would contact the COMPANY after her appointment to provide notification of her  
23 return-to-work date. MS. FRACTIOUS also inquired about her pregnancy disability leave rights.  
24 Ms. Steele bluntly told her that she was not protected by the FMLA (purportedly referring to the  
25 Family Medical Leave Act) and that six weeks was all she was entitled to pursuant to state law. Ms.  
26 Steele refused to engage in any meaningful interactive process with MS. FRACTIOUS. Among  
27 other things, Ms. Steele (i) failed to notify Ms. Fractious as to when, exactly, the mysterious and  
28 vague six-week period allegedly expired, (ii) failed to indicate whether the COMPANY would

1 accommodate MS. FRACTIOUS at least until her August 24, 2004 appointment (or longer, if  
2 necessary), and (iii) failed to inquire as to whether MS. FRACTIOUS would require any other  
3 accommodation upon her return to work. Without any guidance, MS. FRACTIOUS consulted a  
4 copy of the Employee Handbook. To MS. FRACTIOUS' dismay, the Employee Handbook did not  
5 address or even mention an employee's right to take a pregnancy disability leave or to be provided  
6 with reasonable accommodation.

7  
8 29. When MS. FRACTIOUS returned home following her meeting with Jandi  
9 Steele on or about July 27, 2004, she was extremely distressed and asked her mother, Yolanda  
10 Austin, to call the department of Human Resources on her behalf. Ms. Austin spoke to Christine  
11 Yurcheck in Human Resources and complained, on MS. FRACTIOUS's behalf, that the COMPANY  
12 was retaliating against her and trying to get rid of her. On behalf of MS. FRACTIOUS, she also  
13 reiterated her daughter's complaints about the COMPANY's unlawful wage practices. Ms.  
14 Yurcheck assured Ms. Austin (falsely, as it would turn out) that her daughter would not be  
15 terminated.

16  
17 30. On or about July 28, 2004, MS. FRACTIOUS finally received a telephone call  
18 from Phyllis Hawkins, who told her that Mr. Rodriguez and Mr. Fuqua could come in to the office  
19 and retrieve their wages.

20  
21 31. On or about August 24, 2004, MS. FRACTIOUS had her six-week check-up  
22 and was told that her blood pressure was back to normal, that she was recovering well and that she  
23 could return to work. Although MS. FRACTIOUS still did not feel like she had completely  
24 recovered, she was eager to return to her job, particularly in light of defendant HOLT's efforts to  
25 replace her and Ms. Steele's pronouncement that she was only entitled to six weeks.

26 //

27 //

28 //

1           32.    On or about August 25, 2004, Ms. Fractious left a telephone message for  
2 defendant HOLT, notifying her that she was ready to return to work. Defendant HOLT, however,  
3 did not return the call. MS. FRACTIOUS tried reaching defendant HOLT again on or about August  
4 27, 2004 but, according to the switchboard operator, HOLT would not accept her calls.

5  
6           33.    On or about Friday, August 27, 2004, MS. FRACTIOUS was contacted by  
7 Jandi Steele and defendant HOLT. Ms. Steele and defendant HOLT notified MS. FRACTIOUS that  
8 there was no longer a position available for her at GAB ROBINS and that her employment had been  
9 terminated. In fact, MS. FRACTIOUS had been replaced several weeks earlier.

10  
11           34.    Immediately upon being notified of her termination, MS. FRACTIOUS  
12 contacted Craig Howell, the Vice President of the COMPANY's western region and complained.  
13 Mr. Howell, however, confirmed to MS. FRACTIOUS that he and the COMPANY's Human  
14 Resources department had approved her termination and refused to reinstate her.

15  
16           35.    Prior to the filing of this action, MS. FRACTIOUS filed a complaint with the  
17 Department of Fair Employment and Housing ("DFEH") alleging that the acts of defendants, and  
18 each of them, established a violation of the Fair Employment and Housing Act, Government Code  
19 Section 12900 et. seq., and has received the requisite right to sue letters.

20  
21           36.    MS. FRACTIOUS has been generally damaged in an amount within the  
22 jurisdictional limits of this Court.

23 //

24 //

25 //

26 //

27 //

28 //

1 **FIRST CAUSE OF ACTION**

2 **VIOLATION OF GOVERNMENT CODE SECTION 12945 ("FEHA")**

3 **(Failure to Provide Pregnancy Disability Leave, Failure to Reinstate, Failure to Provide**  
4 **Reasonable Accommodations, Failure to Engage in and Interactive Process, Failure to Provide**  
5 **Notice and Other Unlawful Employment Practices Pertaining to Pregnancy, Childbirth and**  
6 **Related Medical Conditions)**

7 (Against Defendants GAB ROBINS and DOES 1 through 50 )

8  
9 37. MS. FRACTIOUS realleges and incorporates by reference paragraphs 4  
10 through 36, as though set forth in full.

11  
12 38. MS. FRACTIOUS is an individual who was affected and/or disabled by  
13 pregnancy, childbirth or related medical conditions. In perpetrating the above-described actions, the  
14 defendants, and each of them, violated Section 12945 of the California Government Code by, *inter*  
15 *alia*, (i) denying, failing to provide and/or failing to guarantee MS. FRACTIOUS a leave of up to  
16 four months, (ii) failing to reinstate MS. FRACTIOUS upon the conclusion of her leave, (iii) failing  
17 to provide reasonable accommodations to MS. FRACTIOUS for conditions related to pregnancy,  
18 childbirth, or related medical conditions, (iv) failing to notify MS. FRACTIOUS of any of her rights  
19 under Government Code Section 12945 and to otherwise comply with the applicable regulations and  
20 laws pertaining to such notice (see, e.g., 2 Cal. Code Regs §7291.16(a)), (v) failing to engage in an  
21 interactive process to determine an appropriate reasonable accommodation for MS. FRACTIOUS,  
22 and (vi) otherwise failing to comply with applicable laws and regulations pertaining to pregnancy  
23 disability rights.

24  
25 39. By the aforesaid acts and omissions of defendants, and each of them, MS.  
26 FRACTIOUS has been directly and legally caused to suffer actual damages including, but not limited  
27 to, loss of earnings and future earning capacity, attorneys' fees, costs of suit and other pecuniary loss  
28 not presently ascertained.

1           40.     As a further direct and legal result of the acts and conduct of defendants, and  
2 each of them, as aforesaid, MS. FRACTIOUS has been caused to and did suffer and continues to  
3 suffer severe emotional and mental distress, anguish, humiliation, embarrassment, fright, shock,  
4 pain, discomfort and anxiety. The exact nature and extent of said injuries is presently unknown to  
5 MS. FRACTIOUS. MS. FRACTIOUS does not know at this time the exact duration or permanence  
6 of said injuries, but is informed and believes and thereon alleges that some if not all of the injuries  
7 are reasonably certain to be permanent in character.

8  
9           41.     MS. FRACTIOUS is informed and believes, and thereon alleges, that the  
10 defendants, and each of them, by engaging in the aforementioned acts and/or in authorizing and/or  
11 ratifying such acts, engaged in wilful, malicious, intentional, oppressive and despicable conduct, and  
12 acted with wilful and conscious disregard of the rights, welfare and safety of MS. FRACTIOUS,  
13 thereby justifying the award of punitive and exemplary damages in an amount to be determined at  
14 trial.

15  
16           42.     As a result of defendants' acts and conduct, as alleged herein, MS.  
17 FRACTIOUS is entitled to reasonable attorneys' fees and costs of suit as provided in Section  
18 12965(b) of the California Government Code.

19  
20                                   **SECOND CAUSE OF ACTION**

21                                   **UNLAWFUL RETALIATION ("FEHA")**

22                   **(Cal. Gov't Code § 12945; 2 Cal. Regs §7291.14; Cal. Gov't Code § 12940(h))**

23                   **(Against Defendants GAB ROBINS, HOLT and DOES 1 through 50 )**

24  
25           43.     MS. FRACTIOUS realleges and incorporates by reference paragraphs 4  
26 through 36, and 38 as though set forth in full.

27 //

28 //

1           44.     As alleged herein and in violation of California Government Code Sections  
2 12945, 12940(h), and Section 7291.14 of Title 2 of the California Code of Regulations, defendants,  
3 and each of them, terminated, discharged, expelled, punished, discriminated against, and otherwise  
4 engaged in a systematic pattern of retaliatory conduct because of MS. FRACTIOUS' pregnancy and  
5 because MS. FRACTIOUS exercised her right to take a pregnancy disability leave or transfer.

6  
7           45.     By the aforesaid acts and omissions of defendants, and each of them, MS.  
8 FRACTIOUS has been directly and legally caused to suffer actual damages including, but not limited  
9 to, loss of earnings and future earning capacity, attorneys' fees, costs of suit and other pecuniary loss  
10 not presently ascertained.

11  
12           46.     As a further direct and legal result of the acts and conduct of defendants, and  
13 each of them, as aforesaid, MS. FRACTIOUS has been caused to and did suffer and continues to  
14 suffer severe emotional and mental distress, anguish, humiliation, embarrassment, fright, shock,  
15 pain, discomfort and anxiety. The exact nature and extent of said injuries is presently unknown to  
16 MS. FRACTIOUS. MS. FRACTIOUS does not know at this time the exact duration or permanence  
17 of said injuries, but is informed and believes and thereon alleges that some if not all of the injuries  
18 are reasonably certain to be permanent in character.

19  
20           47.     MS. FRACTIOUS is informed and believes, and thereon alleges, that the  
21 defendants, and each of them, by engaging in the aforementioned acts and/or in authorizing and/or  
22 ratifying such acts, engaged in wilful, malicious, intentional, oppressive and despicable conduct, and  
23 acted with wilful and conscious disregard of the rights, welfare and safety of MS. FRACTIOUS,  
24 thereby justifying the award of punitive and exemplary damages in an amount to be determined at  
25 trial.

26 //

27 //

28 //



1 pain, discomfort and anxiety. The exact nature and extent of said injuries is presently unknown to  
2 MS. FRACTIOUS. MS. FRACTIOUS does not know at this time the exact duration or permanence  
3 of said injuries, but is informed and believes and thereon alleges that some if not all of the injuries  
4 are reasonably certain to be permanent in character.

5  
6 53. MS. FRACTIOUS is informed and believes, and thereon alleges, that the  
7 defendants, and each of them, by engaging in the aforementioned acts and/or in authorizing and/or  
8 ratifying such acts, engaged in wilful, malicious, intentional, oppressive and despicable conduct, and  
9 acted with wilful and conscious disregard of the rights, welfare and safety of MS. FRACTIOUS,  
10 thereby justifying the award of punitive and exemplary damages in an amount to be determined at  
11 trial.

12  
13 54. As a result of defendants' acts and conduct, as alleged herein,  
14 MS. FRACTIOUS is entitled to reasonable attorneys' fees and costs of suit as provided in Section  
15 12965(b) of the California Government Code.

16  
17 **FOURTH CAUSE OF ACTION**

18 **VIOLATION OF GOVERNMENT CODE SECTION 12940(j) ("FEHA")**

19 **(Harassment Based on Sex, Pregnancy, Childbirth, Medical Conditions Related to Pregnancy**  
20 **or Childbirth)**

21 (Against defendants GAB ROBINS, HOLT and DOES 1 through 50)

22  
23 55. MS. FRACTIOUS realleges and incorporates by reference paragraphs 4  
24 through 36, 38, 44 and 50 as though set forth in full.

25  
26 56. In perpetrating the above-described actions, the defendants, and each of them,  
27 including DOES 1 through 50 and/or their agents and employees, created a hostile and intimidating  
28 work environment and subjected MS. FRACTIOUS to unlawful harassment based on sex,

1 pregnancy, childbirth and/or medical conditions related to pregnancy or childbirth in violation of  
2 Section 12940(j) of the California Government Code and Section 7291.3 of Title 2 of the California  
3 Code of Regulations

4  
5 57. By the aforesaid acts and omissions of defendants, and each of them, MS.  
6 FRACTIOUS has been directly and legally caused to suffer actual damages including, but not limited  
7 to, loss of earnings and future earning capacity, attorneys' fees, costs of suit and other pecuniary loss  
8 not presently ascertained.

9  
10 58. As a further direct and legal result of the acts and conduct of defendants, and  
11 each of them, as aforesaid, MS. FRACTIOUS has been caused to and did suffer and continues to  
12 suffer severe emotional and mental distress, anguish, humiliation, embarrassment, fright, shock,  
13 pain, discomfort and anxiety. The exact nature and extent of said injuries is presently unknown to  
14 MS. FRACTIOUS. MS. FRACTIOUS does not know at this time the exact duration or permanence  
15 of said injuries, but is informed and believes and thereon alleges that some if not all of the injuries  
16 are reasonably certain to be permanent in character.

17  
18 59. MS. FRACTIOUS is informed and believes, and thereon alleges, that the  
19 defendants, and each of them, by engaging in the aforementioned acts and/or in authorizing and/or  
20 ratifying such acts, engaged in wilful, malicious, intentional, oppressive and despicable conduct, and  
21 acted with wilful and conscious disregard of the rights, welfare and safety of MS. FRACTIOUS,  
22 thereby justifying the award of punitive and exemplary damages in an amount to be determined at  
23 trial.

24  
25 60. As a result of defendants' acts and conduct, as alleged herein,  
26 MS. FRACTIOUS is entitled to reasonable attorneys' fees and costs of suit as provided in Section  
27 12965(b) of the California Government Code.

1 **FIFTH CAUSE OF ACTION**  
2 **WRONGFUL TERMINATION AND OTHER ADVERSE EMPLOYMENT ACTIONS IN**  
3 **VIOLATION OF PUBLIC POLICY**

4 (Against defendants GAB ROBINS, HOLT and DOES 1 through 50)

5  
6 61. MS. FRACTIOUS realleges and incorporates by reference paragraphs 4  
7 through 36, 38, 44, 50 and 56 as though set forth in full.

8  
9 62. As alleged herein, and in violation of public policy, defendants, and each of  
10 them, terminated MS. FRACTIOUS from her employment and took other adverse employment  
11 actions against her because of her sex, because of her pregnancy, because of her childbirth, because  
12 of medical conditions related to pregnancy or childbirth, because she exercised her right to take a  
13 pregnancy disability leave and to request a reasonable accommodation, and because she complained  
14 about unlawful wage practices. By, *inter alia*, retaliating against MS. FRACTIOUS, by refusing to  
15 reinstate her, and by terminating her employment, defendants violated the fundamental public  
16 policies of the State of California, as embodied in Sections 12926(p), 12940 et. seq. and 12945 of the  
17 California Government Code, Sections 7291.3, 7291.8, 7291.9, and 7291.14 of Title 2 of the  
18 California Code of Regulations, Section 51, et seq. of the California Civil Code, Section 200 et seq.  
19 of the California Labor Code, Article I, Section 8 of the California Constitution, and other California  
20 statutes, regulations and constitutional provisions. Such fundamental public policies prohibit  
21 employers from, *inter alia*, violating an employee's rights pertaining to pregnancy disability leave;  
22 retaliating against an employee who asserts such rights; discriminating against or harassing an  
23 employee on the basis of sex, pregnancy, childbirth, medical conditions related to pregnancy or  
24 childbirth, and /or for taking pregnancy-disability leave; for failing to reasonably accommodate an  
25 employee for conditions related to pregnancy, childbirth or related medical condition; retaliating  
26 against an employee who protests unlawful wage practices.

27 //

28 //

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

63. By the aforesaid acts and omissions of defendants, and each of them, MS. FRACTIOUS has been directly and legally caused to suffer actual damages including, but not limited to, loss of earnings and future earning capacity, attorneys' fees, costs of suit and other pecuniary loss not presently ascertained.

64. As a further direct and legal result of the acts and conduct of defendants, and each of them, as aforesaid, MS. FRACTIOUS has been caused to and did suffer and continues to suffer severe emotional and mental distress, anguish, humiliation, embarrassment, fright, shock, pain, discomfort and anxiety. The exact nature and extent of said injuries is presently unknown to MS. FRACTIOUS. MS. FRACTIOUS does not know at this time the exact duration or permanence of said injuries, but is informed and believes and thereon alleges that some if not all of the injuries are reasonably certain to be permanent in character.

65. MS. FRACTIOUS is informed and believes, and thereon alleges, that the defendants, and each of them, by engaging in the aforementioned acts and/or in authorizing and/or ratifying such acts, engaged in wilful, malicious, intentional, oppressive and despicable conduct, and acted with wilful and conscious disregard of the rights, welfare and safety of MS. MS. FRACTIOUS, thereby justifying the award of punitive and exemplary damages in an amount to be determined at trial.

66. As a result of defendants' conduct as alleged herein, MS. FRACTIOUS is entitled to reasonable attorneys' fees and costs of suit as provided in Section 1021.5 of the California Civil Procedure Code.

//  
//  
//  
//  
//

1           72. Defendants, and each of them, made and repeated, and conspired to make and  
2 repeat, the above statements with evil motive and malice, wilfully and wrongfully, and with wanton  
3 and reckless disregard for the truth or falsity of the statements made. Further, the publishing of such  
4 defamatory statements was part of a plan to discredit and impugn the reputation and integrity of MS.  
5 FRACTIOUS and with intent to injure, disgrace and defame her.

6  
7           73. At all relevant times mentioned herein, defendants HOLT, GAB ROBINS,  
8 and DOES 1 through 50, and each of them, and their agents, employees, managers, supervisors  
9 and/or officers had the power, ability, authority and duty to stop the publication of the defamatory  
10 statements to third parties. Despite such power, ability, authority and duty, defendants HOLT, GAB  
11 ROBINS, and DOES 1 through 50, and each of them, and their agents, employees, managers,  
12 supervisors and/or officers failed to acts so as to prevent or to prohibit such conduct or to otherwise  
13 protect MS. FRACTIOUS. By failing to act, they confirmed, approved of, authorized and ratified  
14 the defamation.

15  
16           74. By the aforesaid acts and omissions of defendants, and each of them, MS.  
17 FRACTIOUS has been directly and legally caused to suffer actual damages including, but not limited  
18 to, loss of salary increases, loss of earnings, loss of benefits, loss of promotional opportunities, costs  
19 of suit and other pecuniary loss in an amount not presently ascertained, but to be proven at trial.

20  
21           75. As a further direct and legal result of the acts and conduct of defendants, and  
22 each of them, as aforesaid, MS. FRACTIOUS has suffered general damages to her reputation in an  
23 amount to be determined at trial.

24  
25           76. As a further direct and legal result of the acts and conduct of defendants, and  
26 each of them, as aforesaid, MS. FRACTIOUS has been caused to and did suffer and continues to  
27 suffer severe emotional and mental distress, anguish, humiliation, embarrassment, fright, shock,  
28 pain, discomfort and anxiety. MS. FRACTIOUS does not know at this time the exact duration or

1 permanence of said injuries, but is informed and believes, and thereon alleges, that some if not all of  
2 the injuries are reasonably certain to be permanent in character.

3  
4 77. MS. FRACTIOUS is informed and believes and thereon alleges that the  
5 defendants, and each them, by engaging in the aforementioned acts and/or in authorizing and/or  
6 ratifying such acts, engaged in wilful, malicious, intentional, oppressive and despicable conduct, and  
7 acted with wilful and conscious disregard of the rights, welfare and safety of MS. FRACTIOUS,  
8 thereby justifying the award of punitive and exemplary damages in an amount to be determined at  
9 trial.

10  
11 **SIXTH CAUSE OF ACTION**

12 **INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS**

13 (Against all Defendants)

14  
15 78. MS. FRACTIOUS realleges and incorporates by reference paragraphs 4  
16 through 36, 38, 44, 50, 56, 62 and 68 through 75 as though set forth in full.

17  
18 79. Defendants' conduct as described above was extreme and outrageous and was  
19 done with the intent of causing MS. FRACTIOUS to suffer emotional distress or with reckless  
20 disregard as to whether their conduct would cause her to suffer such distress.

21  
22 80. By the aforesaid acts and omissions of defendants, as aforesaid, MS.  
23 FRACTIOUS has been caused to and did suffer and continues to suffer severe emotional and mental  
24 distress, anguish, humiliation, embarrassment, fright, shock, pain, discomfort and anxiety. MS.  
25 FRACTIOUS does not know at this time the exact duration or permanence of said injuries, but is  
26 informed and believes and thereon alleges that some if not all of the injuries are reasonably certain to  
27 be permanent in character.




1  
2  
3 **PRAYER FOR RELIEF**

4 WHEREFORE, PLAINTIFF prays for judgment against defendants, and each of  
5 them, as follows:

- 6 1. General damages in an amount to be proved at trial;  
7 2. Special damages in an amount to be proved at trial;  
8 3. Punitive damages in an amount appropriate to punish defendants and to make  
9 an example of Defendant to the community;  
10 4. Reasonable attorneys' fees;  
11 5. Costs of suit;  
12 6. Interest;  
13 7. For such other relief as the Court deems proper.

14 DATED: November 11, 2005

HELMER • FRIEDMAN, LLP  
Gregory D. Helmer  
Andrew H. Friedman, P.C.


17 By:   
18 Kenneth A. Helmer  
Attorneys for Plaintiff  
ERIKA FRACTIOUS

19  
20 **PLAINTIFF'S DEMAND FOR JURY TRIAL**

21  
22 Plaintiff ERIKA FRACTIOUS hereby demands a trial by jury.

23 DATED: November 11, 2005

HELMER • FRIEDMAN, LLP  
Gregory D. Helmer  
Andrew H. Friedman, P.C.

26 By:   
27 Kenneth A. Helmer  
Attorneys for Plaintiff  
ERIKA FRACTIOUS



SENT BY: HP LASERJET 3150;

3103969215;

MAY-9-05 4:12PM;

PAGE 4/5

**HELMER • FRIEDMAN, L.L.P.**

A 100 PERCENT PARTNERSHIP LIMITED BY A CALIFORNIA CORPORATION

723 Ocean Front Walk

Venice CA 90291

310 396 7714

310 396 9215 FAX

Kenneth A. Helmer  
E-Mail: khelmer@helmerfriedman.com

May 9, 2005

**VIA FACSIMILE & U.S. MAIL**

Michelle La Mar, Esq.  
Loeb & Loeb, LLP  
10100 Santa Monica Blvd.  
Suite 2200  
Los Angeles, CA 90067-4164

Re: Erika Fractious v. GAB Robins, et. al.  
Los Angeles Superior Court Case Number: Not Yet Filed

Dear Ms. La Mar:

In order to preserve the status quo during the time in which the parties are attempting to resolve this matter, we propose that the parties enter the following tolling agreement:

Beginning on May 9, 2005, all statutes of limitations, periods to exhaust administrative remedies, and other applicable time periods relating to any and all of Erika Fractious' CLAIMS (the term "CLAIMS" is specifically defined below) against the DEFENDANTS (the term "DEFENDANTS" is specifically defined below) are hereby tolled, and will not continue to run during the TOLLING PERIOD (the term "TOLLING PERIOD" is specifically defined below).

The term "CLAIMS" is meant to be interpreted as broadly as possible and includes, without any limitation whatsoever, all claims for violation of any and all federal and state constitutions, statutes, regulations, and common laws including, without limitation, harassment, discrimination, retaliation, wrongful termination in violation of public policy, breach of contract, breach of implied contract, fraud & deceit, negligent misrepresentation, invasion of privacy, defamation, libel, slander, unfair business acts and practices, and infliction of emotional distress.

The term DEFENDANTS includes GAB Robins North America, Inc., GAB Robins Risk Management Services, Inc. and any other related entity that employed Erika Fractious and each of their

SENT BY: HP LASERJET 3150;

3109989215;

MAY-9-05 4:12PM;

PAGE 5/5

Michelle La Mar, Esq.  
May 9, 2005  
Page 2

parent companies, subsidiary companies, affiliated companies, and related companies and all of their current and former officers, directors, managing agents and employees including, without limitation, Tammy Holt, Jandi Steele and Craig Howell.

The TOLLING PERIOD shall commence on May 9, 2005 and shall terminate ninety (90) days following the written notification by any party that he/she/or it desires to terminate this tolling agreement.

A signed copy or reproduction of this tolling agreement (including copies or reproductions transmitted via facsimile) shall, in all respects, have the same force and effect as the original.

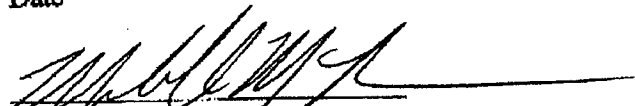
If the foregoing is acceptable, please sign and date this document in the space provided below, and return a copy to my office. Of course, by signing this agreement, you expressly represent that you are authorized by each and every one of the DEFENDANTS (specifically defined above) to enter into this agreement on his, her, and its behalf. Should you have any questions or concerns, please do not hesitate to contact me.

Very Truly Yours,  
HELMER • FRIEDMAN, LLP

By:   
Kenneth A. Helmer

AGREED AND ACCEPTED:

6/1/05  
Date

  
Michelle La Mar, Esq.  
For DEFENDANTS

**LOEB & LOEB** LLP  
A Limited Liability Partnership  
Including Professional Corporations

**Attorneys At Law**  
Los Angeles  
New York  
Chicago  
Nashville

## Facsimile Transmittal

This transmission is intended only for the use of the individual or entity to which it is addressed, and may contain information that is privileged, confidential or exempt from disclosure under applicable law. If the reader of this message is not the intended recipient, or the employee or agent responsible for delivering the message to the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited. If you have received this communication in error, please notify us immediately by telephone. Thank you.

**Date:** 2005-06-02 17:59:47 GMT

---

**Number of Pages (including this cover letter)** 3

---

**To:** Kenneth Helmer  
Helmer Friedman, LLP

**Facsimile:** 13103969215

---

**From:** Michelle La Mar

**Direct Dial:** (310) 282-2133

**Facsimile:** 13109193853

**E-Mail:** mlamar@loeb.com

---

**Re:** Erika Fractitious v. GAB Robins, et al.

---

**Message to Addressee:**

