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OCT 29 2013

9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
10 **IN AND FOR THE COUNTY OF SACRAMENTO**

11 VALERIE KERSTE,

12 Plaintiff,

13 v.

14 KAISER FOUNDATION HOSPITAL;
15 KAISER FOUNDATION HOSPITAL aka
16 KAISER PERMANENTE; and DOES 1
17 through 100, inclusive.

18 Defendants.

Case No.

**COMPLAINT FOR DAMAGES;
REQUEST FOR JURY TRIAL**

19 COMES NOW, PLAINTIFF, VALERIE KERSTE, and alleges as follows:

20 1. Plaintiff, VALERIE KERSTE (hereafter "KERSTE" or "Plaintiff"), is and at all relevant times
21 hereto was, a resident of the County of Sacramento in the state of California and was employed as the
22 Administrative Nursing Supervisor (aka House Supervisor) and Bed Flow Director at the Kaiser
23 Permanente Medical Facility in Sacramento, California.

24 2. On information and belief, KERSTE'S employer was KAISER FOUNDATION HOSPITAL
25 (hereafter "KFH"), which is also known and referred to as "KAISER PERMANENTE". KERSTE worked
26 at the Kaiser Sacramento Medical Center located at 2025 Morse Avenue, in the City and County of
27 Sacramento, located in the State of California.

3. Defendants DOES 1 through 100 inclusive are, on information and belief, individuals employed by or working with the foregoing Defendants who have had some involvement in the direct supervision of KERSTE or were responsible for employment decisions relating to the Plaintiff.

4. Plaintiff alleges that the true names of Defendants DOES 1 to 100 are unknown to her and that she will amend this Complaint to state their true names upon learning same. Plaintiff alleges on information and belief that each DOE Defendant is liable in some manner or capacity for the acts, events and occurrences alleged herein and that each of said DOES had a business relationship with KERSTE and owed her duties thereunder.

5. The Defendant(s) acting as KERSTE'S employer, or as agents for KERSTE'S employer including all DOES, are collectively referred in this Complaint as "KAISER". KERSTE will amend her complaint to assert the true name of her employer during the relevant timeframe once it has been established and/or confirmed, if different than alleged herein.

6. Plaintiff alleges on information and belief that each of the Defendants herein was, at all relevant times, the agent, employee or representative of the remaining Defendant(s) Employer(s) and was either acting within the course and scope of such relationship or acting so as to be independently liable for the injuries alleged herein. Plaintiff also alleges that Defendants conspired to discriminate and retaliate against her so as to drive Plaintiff out of her employment with KAISER at the Sacramento Medical Center and that such retaliation has ultimately resulted in adverse employment actions against her in violation of California public policy and other statutes as alleged herein. In the alternative, Plaintiff alleges on information and belief that Defendants, and each of them, ratified the wrongful and tortious acts of their fellow Defendants, and each of them.

GENERAL ALLEGATIONS COMMON TO ALL CAUSES OF ACTION

7. Plaintiff KERSTE alleges that she was employed by KAISER for approximately eight (8) years in various capacities and progressed to the position of Administrative Nursing Supervisor and Bed Flow Director responsible for placement of all patients processed through the "Bed Hub".

8. KERSTE was a vested long-term KAISER employee subject to an implied contract of employment based upon the personnel practices of her employer and the longevity of her service to her employer. The actions and communications made by KAISER to KERSTE reflecting practices in the

1 industry provided KERSTE assurances of her continued employment. At all times alleged herein,
2 KERSTE was paid hourly.

3 9. KAISER'S personnel policies preclude KAISER from terminating KERSTE except in
4 accordance with specified procedures or without good cause.

5 10. KERSTE alleges that at all relevant times during her employment with Defendants, she
6 performed her duties in an excellent fashion; that she received performance evaluations over the course of
7 her employment attesting to her excellent performance; that she was given duties of increasing
8 responsibility during her tenure in KAISER's employ; and that prior to the time she was subjected to a
9 hostile work environment, she had attained success in the position of Administrative Nursing Supervisor.

10 11. In or about December 2008, commencing with the creation of the Bed Hub and continuing to
11 present, KERSTE was subjected to a Hostile Work Environment perpetuated by a KFH employee in the
12 Bed Hub. The KFH employee engaging in and directing the hostile conduct towards KERSTE and other
13 employees [referred to herein as "CLERK"] is African American. KERSTE is Caucasian.

14 12. Despite her position as Nursing Administrative Supervisor, KERSTE was not CLERK's direct
15 supervisor. CLERK was assigned to a remote department responsible for her supervision.

16 13. At all times relevant hereto, CLERK engaged in disruptive, insubordinate conduct in the Bed Hub
17 which became so pervasive that it created a hostile work environment.

18 14. At various times from 2008 and continuously to present, CLERK was disrespectful in her
19 demeanor and/or abusive in her verbal responses to KERSTE, ignored and/or failed to follow instructions,
20 and refused to look at or speak to KERSTE and other Nursing Supervisors so as to obstruct KERSTE's
21 ability to work.

22 15. CLERK further failed and refused to respond to KERSTE's requests for assistance, disappeared
23 from her duty station for lengthy periods of time without explanation requiring KERSTE to perform
24 CLERK'S tasks in addition to her own, slept during her shift, intimidated KERSTE by making audio tape
25 recordings of KERSTE's discussions with other supervisors, removed and hid personal items belonging to
26 supervisors, continually complained she did not know how to do required duty tasks she had previously
27 been trained to perform, was deceitful in the work place regarding tasks she allegedly completed or
28 regarding instructions she received, hung up the phone whenever KERSTE called her, told KERSTE that

1 she was not permitted to speak to KERSTE by upper management and made snide remarks about
2 KERSTE to other employees in KERSTE's presence.

3 16. CLERK threw items across the room and against the wall, slammed furniture around in the
4 office and engaged in annoying conduct such as soiling official hospital paperwork by throwing it onto
5 KERSTE's open food containers, snapped chewing gum, drummed her fingers on the desk, crunched ice
6 and hummed or sang in the workplace in a such a loud and obnoxious manner so as to distract and
7 obstruct KERSTE from completing her work.

8 17. Over express directives to the contrary, CLERK also engaged in conduct wherein she
9 performed excessive cleaning in the Bed Hub with non-authorized toxic cleaning chemicals that made
10 KERSTE, during a period of pregnancy, and other employees physically sick.

11 18. KERSTE documented these violations of Kaiser Personnel Policies and other violations ,
12 including but not limited to (1) violations of KAISER's harassment policies (i.e. a continuous pattern of
13 workplace bullying directed at KERSTE and other employees); (2) harassment for speaking about matters
14 of public concern related to employee and patient safety concerning the use of toxic materials in the
15 workplace; (3) harassment for participating in Human Resource Department investigations initiated by
16 KERSTE and other supervisors to determine the truth and/or falsity of KERSTE's hostile work
17 environment and bullying; (4) unequal treatment of employees in violation of policy; (5) unwarranted
18 reprimands to KERSTE about her ability to work with other employees, and other conduct.

19 19. The foregoing conduct, bullying and harassment perpetrated by CLERK created hostile and
20 intolerable working conditions which were was known to and tolerated by KERSTE's superiors and
21 KAISER Management.

22 20. Despite numerous claims of escalating hostile behavior by KERSTE and other KAISER nursing
23 administrators required to work with CLERK, Human Resources investigations, and KAISER's own
24 acknowledgement that KERSTE was working in hostile work conditions, KAISER did nothing to
25 eliminate the hostile work environment.

26 21. On information and belief, a member of KAISER's upper management who attempted to address
27 the hostile work environment claims was advised not to get involved and/or transferred to another facility.
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22. Instead of eliminating the disruptive conduct and hostile work environment, KAISER required KERSTE to work remotely from a waiting room on her cell phone. From approximately December 2012 and continuing through the Spring of 2013, KERSTE was accompanied by another employee so that she would not be required to be alone in the Bed Hub department with CLERK.

23. Plaintiff was justified in speaking out and assisting in the investigation because the hostile work environment constituted and continues to constitute a threat to her safety and well-being and the safety and well-being of existing KAISER employees and patients.

24. KERSTE alleges that her job duties and responsibilities, the existing standards, and the law itself required that she stand up for herself and other KAISER employees and KAISER's employment standards and oppose the unlawful practices occurring at KAISER that perpetuated the hostile working conditions.

25. KAISER had actual knowledge of KERSTE's participation in the investigations because (1) KAISER itself conducted the investigations; (2) KERSTE's coworkers and supervisors were interviewed in connection with the investigations; and (3) KAISER acknowledged the existence of the hostile work environment to KERSTE.

26. Plaintiff KERSTE further alleges that in retaliation for her participation in the investigation and her opposition to violations of the law, that Defendants began an ongoing course of unlawful retaliation and harassment against her, which included, but is not limited to (1) failure to remove the hostile work environment, (2) unwarranted investigations and (3) negative performance evaluations. The unlawful retaliation complained of is ongoing.

27. Said unlawful harassment and retaliation took the form of unjustified "investigations", surveillance, unjustified discipline, adverse employment action, petty and/or substantial reprisals that she was not a "team player" and did not work well with others, continued job stress and pressures, isolation from other employees within the Sacramento Medical Facility, punitive reassignments, being "locked out" of her own department and other forms of unlawful harassment, retaliation and reprisals.

28. Plaintiff alleges that the unlawful and retaliatory acts directed towards her leading to adverse employment action included but were not limited to

- a. Derogatory comments from her supervisors and other KAISER administrators regarding KAISER's internal investigation;

- b. Creation, maintenance and refusal to eliminate a hostile work environment which included bullying behavior directed towards Plaintiff after KERSTE reported violations of laws and KAISER policies and procedures;
- c. Removal and reassignment of work responsibilities to other employees to prevent Plaintiff from seeing and reporting improper activities;
- d. Forced transfer to a remote location during shift hours when CLERK was in the hospital;
- e. Requiring another KAISER employee to be present with her in her department during shifts CLERK was working;
- f. Directives to CLERK not to answer telephone calls or to respond to KERSTE's questions related to the administration of the Department;
- g. Requiring KERSTE to communicate with CLERK only through third parties;
- h. Unwarranted reprimands;
- i. Surveillance in the workplace;
- j. Isolation within the workplace including denial of access to her office and computer during certain periods, constituting a de facto "lock out";
- k. Defamatory and derogatory statements concerning Plaintiff's competency and character to co-workers and other managers working for KAISER;
- l. Pre-textual claims that Plaintiff had a "bad attitude" or was "not a team player"; and
- m. denial of bonuses and overtime.

29. All of the foregoing, and other acts, created a work environment that was hostile for Plaintiff, and would be considered hostile to a reasonable person working under similar conditions.

30. Despite acknowledging the existence of a hostile work environment, KAISER did nothing to stop the harassment KERSTE was experiencing at the hands of CLERK and her supervisors. KAISER has failed to take steps to eliminate the hostile workplace and allowed the intolerable working conditions to continue.

1 31. Despite the fact that KERSTE was involved in no wrongdoing, KAISER continued to retaliate
2 against her by obstructing her ability to mitigate her damages by refusing to remove CLERK from the
3 environment.

4 32. Plaintiff alleges that the aforementioned unlawful retaliation and reprisals have caused her lost
5 wages and benefits, and other special damages, according to proof.

6 33. KERSTE alleges that as a legal consequence of said unlawful harassment, retaliation and reprisals
7 that she has suffered physical injury, emotional injuries and physical illness. The unlawful retaliation and
8 reprisals have caused Plaintiff to suffer damages, including but not limited to physical illness, hair loss,
9 shock, worry, anxiety, embarrassment, humiliation, fear, loss of sleep, depression, mental anguish, angst,
10 uncertainty, nervousness, damage to her nervous systems, loss of emotional tranquility, related mental and
11 physical injuries and mental distress, and other pain and suffering damages according to proof.

12 34. In addition to the foregoing alleged acts, KERSTE alleges that she has suffered wage loss and
13 other loss of benefits during her employment with KAISER and prays for damages as set forth
14 hereinbelow.

15 **EXHAUSTION OF ADMINISTRATIVE REMEDIES**

16 35. KERSTE timely filed a claim with the California Department of Fair Employment and Housing
17 (herein referred to as the "DFEH") for unlawful discrimination based on race. On or about June 11,
18 2013, DFEH issued a letter to KERSTE advising of her of case closure, and her right to sue, attached
19 hereto as Attachment 1.

20 36. This Complaint is timely brought pursuant to both of the aforementioned Notice of Case
21 Closure and Right to Sue Letter.

22 **FIRST CAUSE OF ACTION** 23 **VIOLATION OF THE FAIR EMPLOYMENT AND HOUSING ACT** 24 **(Unlawful Employment Discrimination on the Basis of Race)** 25 **[Cal. Gov. Code §12920, et seq., §12940, et seq., §12040(a)]** 26 **(KERSTE v. ALL DEFENDANTS)**

27 37. KERSTE realleges and incorporates each of the preceding paragraphs herein as though set
28 forth in full.

1 38. The FEHA, California Government Code §12940 states:

2 "It shall be an unlawful employment practice, unless based upon a bona fide
3 occupational qualification, or, except where based upon applicable security
4 regulations established by the United States or the State of California:

5 (a) For an employer, because of the race, religious creed, color, national
6 origin, ancestry, physical disability, mental disability, medical condition,
7 marital status, sex, or sexual orientation of any person, to refuse to hire or
8 employ the person or to ... *** ... bar or to discharge the person from
employment or from a training program leading to employment, or to
discriminate against the person in compensation or in terms, conditions, or
privileges of employment." (Cal. Gov. Code §12940 and §12940(a).)

9 39. KAISER is a California corporation employing five or more persons within the State of
10 California, and is an employer for purposes of the FEHA and therefore subject to its provisions.

11 40. KERSTE is a Caucasian who has been employed with KAISER for a period of approximately
12 eight (8) years.

13 41. KERSTE alleges that the discrimination she experienced culminating in the ongoing exposure
14 to a hostile work environment was racially based due to and as evidenced by KAISER management
15 comments that KAISER could not eliminate the hostile work environment and concurrent harassment by
16 CLERK for fear that CLERK, who is African American, would make claims against KAISER for racial
17 discrimination. By perpetuating and permitting the hostile work environment to continue,
18 DEFENDANT violated KERSTE's rights under the FEHA which prohibits unlawful discrimination on
19 the basis of race.

20 42. KERSTE exhausted her administrative remedies by filing claims and charges of discrimination
21 with the California Department of Fair Employment & Housing, obtaining a Notice of Case Closure and
22 a Right to Sue letter attached hereto as Attachment "1."

23 43. As a result of the foregoing acts and omissions listed in the above paragraphs and other
24 unalleged acts, KERSTE has been denied equal treatment as required by the FEHA and has suffered
25 damages as set forth herein above and prays for the relief as set forth below.

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SECOND CAUSE OF ACTION
VIOLATION OF THE FAIR EMPLOYMENT & HOUSING ACT
(Retaliation for Opposition to Discrimination)
[California Fair Employment & Housing Act,
Cal. Gov. Code §12920 et seq., §12940 et seq.; §12940(h)]
(KERSTE v. ALL DEFENDANTS)

44. KERSTE re-alleges and incorporates the allegations of all preceding paragraphs as though set forth in full.

45. The FEHA, California Government Code §12940(h) states:

“It shall be an unlawful employment practice...

(h)For any employer...to discharge, expel, or otherwise discriminate against any person because the person has opposed any practices forbidden under this part or because the person has filed a complaint, testified or assisted in any proceeding under this part.” (California Govt. Code §12940(h).)

46. KERSTE alleges that she opposed discrimination against herself by reporting a hostile work environment and challenging the conduct of CLERK towards her coworkers and supervisors.

47. After Plaintiff opposed the discriminatory practices of KAISER, KAISER failed to eliminate the discrimination, but rather, retaliated against KERSTE by failing to take appropriate action against the employee wrongdoers, reprimanding KERSTE for complaining to upper management and otherwise harassing KERSTE by imposing adverse employment conditions on KERSTE as set forth hereinabove.

48. KERSTE exhausted her administrative remedies by filing claims and charges of discrimination with the California Department of Fair Employment & Housing, obtaining a Notice of Case Closure and Right to Sue Letter which is submitted herewith at Attachment “1.”

49. As a result of the foregoing acts and omissions listed in the above paragraphs and other unalleged acts, KERSTE has been denied equal treatment as required by the FEHA and has suffered damages as forth hereinabove and prays for the relief as set forth below.

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**THIRD CAUSE OF ACTION
BREACH OF IMPLIED COVENANT OF
GOOD FAITH AND FAIR DEALING
(KERSTE v. ALL DEFENDANTS)**

50. KERSTE realleges and incorporates each of the preceding paragraphs herein as though set forth in full.

51. As an implied term of the oral employment agreement between Plaintiff and Defendants, Defendant(s) KAISER covenanted and promised to act in good faith toward and deal fairly with Plaintiff concerning all matters related to her employment with KAISER so as to not deprive Plaintiff of or injure her right to receive the benefits of said relationship.

52. Defendants, and each of them, breached said covenant of good faith and fair dealing and Plaintiff's employment contract through the perpetuation of a hostile workplace, an unlawful adverse employment action, the violation of Plaintiff's legal rights in her employment to be free of bullying, harassment and a hostile work environment by doing all other acts alleged herein.

53. As a proximate result of the foregoing acts of Defendants listed in all paragraphs above and other acts, Plaintiff has been damaged as set forth in hereinabove and prays for the relief as set forth below.

**FOURTH CAUSE OF ACTION
VIOLATION OF WAGE AND LABOR STATUTES
FAILURE TO PAY OVERTIME COMPENSATION
(KERSTE v. ALL DEFENDANTS)**

54. KERSTE re-alleges and incorporates the allegations of all preceding paragraphs as though set forth in full.

55. Pursuant to Cal. Lab. Code § 204, other applicable laws and regulations, and public policy, an employer must timely pay its non-exempt employees for all hours worked.

56. Cal. Lab. Code § 510 further provides that employees in California shall not be employed more than eight (8) hours per workday and/or any work in excess of 40 hours in any one workweek unless they receive additional compensation beyond their regular wages in amounts specified by law.

1 57. At all times relevant hereto, KERSTE was a non-salaried, non-exempt administrative employee
2 and, as part of her position, was required to keep a timecard and to document overtime.

3 58. Cal. Lab. Code § 515 sets out various categories of employees who are exempt from the
4 overtime requirements of the law. None of these exemptions are applicable to KERSTE.

5 59. Commencing in/or about December 2008 to present, KERSTE was authorized to work
6 overtime when necessary to meet the needs of the department and to document CLERK's conduct. Each
7 time KERSTE worked overtime hours, she notated her work on timecards and submitted her hours to
8 payroll for processing.

9 60. On multiple occasions, KERSTE's timecards were altered by KAISER management and she
10 failed to receive pay for work she actually performed for KAISER and its specific assignment and
11 request.

12 61. Despite actual knowledge thereof, KAISER has failed and refused to correct KERSTE's
13 timecards and/or pay her for hours actually worked, in an amount according to proof.

14 62. As an hourly, non-exempt employee, KERSTE is entitled to rest and meal breaks away from
15 the workplace.

16 63. Commencing in/or about December 2008 and continuing to present, KERSTE has been denied
17 rest and meal breaks.

18 64. Despite actual notice thereof, KAISER has failed and refused to pay KERSTE for amounts due
19 her for work performed during said missed breaks in an amount according to proof.

20 65. Cal. Lab. Code § 1194 establishes an employee's right to recover unpaid wages, including
21 overtime compensation and interest thereon, together with the costs of suit. Pursuant to Cal. Lab. Code §
22 1194, Plaintiff seeks payment for all overtime compensation she earned after four (4) years prior to filing
23 this complaint, according to proof.

24 66. In committing these violations of the California Labor Code, DEFENDANT inaccurately,
25 intentionally and/or negligently miscalculated the applicable overtime hours worked and consequently
26 underpaid the actual hours worked. DEFENDANT acted in an illegal attempt to avoid the payment of all
27 earned wages, and other benefits in violation of the California Labor Code, the Industrial Welfare
28 Commission requirements and other applicable laws and regulations.

1 67. DEFENDANT knew or should have known that KERSTE was under compensated for her
2 overtime hours worked. DEFENDANT systematically elected, either through intentional malfeasance or
3 gross nonfeasance, to not pay Plaintiff for her labor as a matter of uniform corporate policy, practice and
4 procedure, and DEFENDANT perpetrated this systematic scheme by refusing to pay the PLAINTIFF her
5 true amount of wages.

6 68. DEFENDANT failed to accurately pay KERSTE overtime wages for the hours worked which
7 were in excess of the maximum hours permissible by law as required by Cal. Lab. Code §§ 510 and 1194
8 et seq., even though the KERSTE was regularly required to work, and did in fact work, uncompensated
9 hours for which DEFENDANT failed to accurately record the applicable overtime as evidenced by
10 DEFENDANT's business records and witnessed by Plaintiff.

11 69. By virtue of DEFENDANT's unlawful failure to accurately pay all earned compensation to
12 KERSTE for the true number of hours worked, KERSTE has suffered and will continue to suffer an
13 economic injury in amounts which are presently unknown to her and which will be ascertained according
14 to proof at trial.

15 70. In performing the acts and practices herein alleged in violation of California labor laws, and
16 refusing to compensate KERSTE for all hours worked and provide her with the requisite overtime
17 compensation DEFENDANT acted and continues to act intentionally, oppressively, and maliciously
18 toward KERSTE with a conscious of and utter disregard for her legal rights, or the consequences to her,
19 and with the intent of depriving her of her property and legal rights, and otherwise causing her injury in
20 order to increase corporate profits at the expense of these employees.

21 71. KERSTE therefore requests recovery of all unpaid wages, including overtime wages, according
22 to proof, together with interest, statutory costs, as well as the assessment of any statutory penalties
23 against DEFENDANT, in a sum as provided by the California Labor Code and/or other applicable
24 statutes. Further, KERSTE is entitled to seek and recover statutory costs.

25 72. As a direct and proximate result of the foregoing acts of Defendants listed in all paragraphs above
26 and other acts, Plaintiff has been damaged in the form of lost wages and other employment benefits
27 according to proof, and prays for the relief as set forth below.

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**FIFTH CAUSE OF ACTION
VIOLATION OF WAGE AND LABOR STATUTES
FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS
(KERSTE v. KFH)**

74. KERSTE re-alleges and incorporates the allegations of all preceding paragraphs as though set forth in full.

75. Cal. Labor Code § 226 provides that an employer must furnish employees with an "accurate itemized" statement in writing showing:

(1) gross wages earned, (2) total hours worked by the employee, except for any employee whose compensation is solely based on a salary and who is exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission, (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number, (8) the name and address of the legal entity that is the employer and, if the employer is a farm labor contractor, as defined in subdivision (b) of Section 1682, the name and address of the legal entity that secured the services of the employer, and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee and, beginning July 1, 2013, if the employer is a temporary services employer as defined in Section 201.3, the rate of pay and the total hours worked for each temporary services assignment. (Cal. Labor Code § 226)

76. At all times relevant herein, DEFENDANT violated Cal. Lab. Code § 226 in that DEFENDANT failed to provide an accurate wage statement in writing that properly and accurately itemizes the overtime hours worked, the deductions, the net wages earned, and the gross wages earned by KERSTE.

77. Moreover, pursuant to Labor Code § 226, California employers are required to maintain accurate records pertaining to the total hours KERSTE worked for DEFENDANT, including, but not

1 limited to, the total hours worked per pay period and applicable rates of pay. Plaintiffs are informed and
2 believe and based thereupon allege that DEFENDANT, did not maintain accurate records of all hours
3 worked and instead failed to keep accurate time records of all hours worked and/or directed employees
4 to only report 8 hours per work day irrespective of actual hours worked in order to avoid paying
5 KERSTE overtime. For all or a significant portion of the time period in question, DEFENDANT's policy,
6 pattern and practice instructed employees to limit KERSTE's time entries and/or to under-report actual
7 hours caused or suffered to work.

8 78. DEFENDANT knowingly and intentionally failed to comply with Cal. Lab. Code § 226,
9 causing injury and damages to KERSTE. These damages include, but are not limited to, costs expended
10 calculating the correct rates for the overtime hours worked and the amount of employment taxes which
11 were not properly paid to state and federal tax authorities. These damages are difficult to estimate.
12 Therefore, KERSTE may elect to recover liquidated damages of fifty dollars (\$50.00) for the initial pay
13 period in which the violation occurred, and one hundred dollars (\$100.00) for each violation in a
14 subsequent pay period pursuant to Cal. Lab. Code § 226, in an amount according to proof at the time of
15 trial (but in no event more than four thousand dollars (\$4,000.00) for KERSTE) and is entitled to an
16 award of costs and reasonable attorney's fees.

17 **SIXTH CAUSE OF ACTION**
18 **VIOLATIONS OF UNFAIR COMPETITION LAW**
19 **[Cal. Bus. and Prof. Code §§ 17200, et seq.]**
20 **(KERSTE v. KFH)**

21 79. KERSTE re-alleges and incorporates the allegations of all preceding paragraphs as though set
22 forth in full.

23 80. DEFENDANT is a "person" as that term is defined under Cal. Bus. and Prof. Code § 17021.

24 81. California Business & Professions Code §§ 17200, et seq. defines unfair competition as any
25 unlawful, unfair, or fraudulent business act or practice. Section 17203 authorizes injunctive, declaratory,
26 and/or other equitable relief with respect to unfair competition as follows:

27 "Any person who engages, has engaged, or proposes to engage in unfair
28 competition may be enjoined in any court of competent jurisdiction. The
court may make such orders or judgments, including the appointment of a
receiver, as may be necessary to prevent the use or employment by any

1 person of any practice which constitutes unfair competition, as defined in
2 this chapter, or as may be necessary to restore to any person in interest any
3 money or property, real or personal, which may have been acquired by
4 means of such unfair competition." (Cal. Bus. & Prof. Code§ 17203)

5 82. By the conduct alleged herein, DEFENDANT has engaged and continues to engage in a
6 business practice which violates California law, including but not limited to, Wage Order 4-2001, the
7 California Code of Regulations and the California Labor Code including Sections 204, 226, 510, and
8 1194, for which this Court should issue declaratory and other equitable relief pursuant to Cal. Bus. &
9 Prof. Code § 17203 as may be necessary to prevent and remedy the conduct held to constitute unfair
10 competition, including restitution of wages wrongfully withheld.

11 83. By the conduct alleged herein, DEFENDANT's practices were unlawful and unfair in that
12 these practices violate public policy, are immoral, unethical, oppressive, unscrupulous or substantially
13 injurious to employees, and are without valid justification or utility for which this Court should issue
14 equitable and injunctive relief pursuant to Section 17203 of the California Business & Professions Code,
15 including restitution of wages wrongfully withheld.

16 84. By the conduct alleged herein, DEFENDANT's practices were deceptive and fraudulent in that
17 DEFENDANT's uniform policy and practice was to fail to pay KERSTE wages due for overtime hours
18 worked, fail to accurately record all overtime hours worked, and failure to keep proper records, pursuant
19 to the applicable Cal. Lab. Code, and Industrial Welfare Commission requirements in violation of Cal.
20 Bus. Code § 17200, et seq., and for which this Court should issue injunctive and equitable relief,
21 pursuant to Cal. Bus. & Prof. Code§ 17203, including restitution of wages wrongfully withheld.

22 85. By the conduct alleged herein, DEFENDANT's practices were also unlawful, unfair and
23 deceptive in that DEFENDANT's employment practices caused the KERSTE to be underpaid during her
24 employment with DEFENDANT. DEFENDANT has reaped and continues to reap unfair benefits at the
25 expense of PLAINTIFF.

26 86. By and through the unlawful and unfair business practices described herein, DEFENDANT has
27 obtained valuable property, money and services from KERSTE, including earned wages for all overtime
28 hours and lost breaks worked, and has deprived her of valuable rights and benefits guaranteed by law

1 and contract, all to the detriment of her and to the benefit of DEFENDANT so as to allow
2 DEFENDANT to unfairly compete against competitors who comply with the law.

3 87. All the acts described herein as violations of, among other things, the Industrial Welfare
4 Commission Wage Orders, the California Code of Regulations, and the California Labor Code, are
5 unlawful and in violation of public policy, are immoral, unethical, oppressive and unscrupulous, are
6 deceptive, and thereby constitute unlawful, unfair and deceptive business practices in violation of Cal.
7 Bus. & Prof. Code §§ 17200, et seq.

8 88. As a direct and proximate result of the unfair business practices of DEFENDANT, KERSTE is
9 entitled to equitable and injunctive relief, including full restitution, disgorgement, and/or specific
10 performance of payment of all wages and pay that have been unlawfully withheld from her as a result of
11 the business acts and practices described herein and enjoining DEFENDANT to cease and desist from
12 engaging in the practices described herein.

13 89. KERSTE is entitled to, and does, seek such relief as may be necessary to restore to her the
14 money and property which DEFENDANT has acquired, or of which the PLAINTIFF has been deprived,
15 by means of the above described unlawful and unfair business practices, including earned but unpaid
16 wages for all hours worked.

17 90. KERSTE is further entitled to, and does, seek a declaration that the described business
18 practices are unlawful, unfair and deceptive, and that injunctive relief should be issued restraining
19 DEFENDANT from engaging in any unlawful and unfair business practices in the future.

20 91. KERSTE has no plain, speedy and/or adequate remedy at law that will end the unlawful and
21 unfair business practices of DEFENDANT. Further, the practices herein alleged presently continue to
22 occur unabated. As a result of the unlawful and unfair business practices described herein, KERSTE has
23 suffered and will continue to suffer irreparable legal and economic harm unless DEFENDANT is
24 restrained from continuing to engage in these unlawful and unfair business practices.

25 92. KERSTE further requests that the court issue a preliminary and permanent injunction
26 prohibiting Defendants to continue engaging in the practices described hereinabove.

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PRAYER FOR RELIEF

WHEREFORE, PLAINTIFF KERSTE prays for relief against DEFENDANTS, and each of them, jointly and severally, as follows:

1. For compensatory damages according to proof;
2. For general damages;
3. Statutory damages as provided for by statute;
4. For exemplary and punitive damages in the amount of \$1,000,000.00;
5. For attorneys' fees pursuant to statute and other relevant provisions of the law
6. For costs of the suit herein incurred; and
7. For such other and further relief as the court may deem proper.

Dated: October 25, 2013

NEASHAM & KRAMER LLP

By Patricia Kramer
PATRICIA KRAMER