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**FILED**  
ALAMEDA COUNTY

OCT 30 2013

CLERK OF THE SUPERIOR COURT  
By *[Signature]*  
DEPUTY

SUPERIOR COURT OF CALIFORNIA  
COUNTY OF ALAMEDA

ETIENNE NDEDI, an individual,

Plaintiff,

vs.

KAISER FOUNDATION HEALTH PLAN,  
INC., a California corporation;  
GWENDOLYN ISAAC, an individual; and  
DOES 1-10, inclusive,

Defendants.

Case No.:

**RG13701246**

**COMPLAINT FOR DAMAGES**

1. Discrimination (Gov. Code § 12940(a))
2. Retaliation (Gov. Code § 12940(h))
3. Whistleblower Retaliation (Labor Code § 1102.5(c))
4. Sexual Harassment (Gov. Code § 12940(j))
5. Unpaid Overtime (Labor Code § 1194)
6. Failure to Provide Meal and Rest Breaks (Labor Code §§ 512, 226.7)
7. Unfair Competition (Bus. & Prof. Code § 17200 et seq.)
8. Unpaid Salary (Labor Code § 218)

Plaintiff ETIENNE NDEDI ("NDEDI"), for his Complaint against defendants KAISER FOUNDATION HEALTH PLAN, INC. ("KAISER"), GWENDOLYN ISAAC ("ISAAC") and DOES 1-10 (collectively, "Defendants"), states and alleges as follows:

**INTRODUCTION**

1. This action arises from (a) KAISER's long-standing pattern and practice of discrimination against NDEDI and others based on race, color and national origin and its retaliation against NDEDI for opposing such discrimination, (b) KAISER's retaliation against NDEDI for refusing to participate in, and endeavoring to correct, violations of law or regulation, (c) ISAAC's quid pro quo sexual harassment of NDEDI, (d) KAISER's misclassification of NDEDI as exempt from overtime and meal and rest break requirements and (e) KAISER's failure to pay NDEDI's salary, and instead deducting paid time off ("PTO") from his PTO bank, during a

1 leave of absence during which he was required to perform work for KAISER.

2 **PARTIES, JURISDICTION AND VENUE**

3 2. NDEDI is a Black man born in Cameroon. He speaks fluent English with a French  
4 accent. He received a Masters degree in Economics from the University of California at  
5 Berkeley. He has been employed by KAISER at its Oakland headquarters since 2000. He is a  
6 resident of Alameda County, California.

7 3. On information and belief, KAISER is a California corporation with its  
8 headquarters in Oakland, California. KAISER is a health maintenance organization providing  
9 managed care to many thousands, if not millions, of members primarily in the Western United  
10 States.

11 4. On information and belief, ISAAC is a resident of Pasadena, California. She is a  
12 Director-level employee of Kaiser who is in the direct line of authority above NDEDI.

13 5. DOES 1-10 are other individuals and/or entities who aided, participated in,  
14 ratified, unjustly benefited from, or are otherwise responsible for the unlawful activities  
15 complained of herein whose identities or complicity in any potential wrongdoing are presently  
16 unknown to NDEDI. One or more of DOES 1-10 are residents of California or California  
17 businesses. NDEDI will amend his complaint to allege the true names and capacities of DOES 1-  
18 10 once they are ascertained. NDEDI makes all of his allegations in this Complaint against  
19 DOES 1-10; where such allegations are not made with personal knowledge as to DOES 1-10,  
20 they are made upon information and belief.

21 6. At all relevant times, each defendant was an agent, principal, employee, employer,  
22 or joint venturer of each of the remaining defendants and was at all times acting within the course  
23 and scope of such agency, employment or joint venture, and/or each defendant has engaged in,  
24 ratified, approved, benefited from, or authorized the acts of each of the remaining defendants with  
25 full knowledge of said acts.

26 7. Venue is proper in this Court in that most of the acts complained of took place in  
27 the County of Alameda, California, where NDEDI worked for KAISER and currently resides and  
28 where KAISER has its headquarters.



## GENERAL FACTUAL ALLEGATIONS

8. NDEDI moved from France, where he was living at the time, to the United States to take a Data Consultant position at Kaiser in 2000. He was hired by Dale Harrington (White). His first supervisor was Michael Emery (White).

9. NDEDI spent his first few months updating databases and creating reports to familiarize himself with programming in the computer language used by KAISER's system. From the beginning, Emery was unfriendly, reluctant to answer his questions about the computer system and programming in that language, and complained that in his opinion, NDEDI made too much money. NDEDI tried to speak to Harrington about Emery's conduct, but Harrington just told him to address it with Emery.

10. After Emery resigned in November 2000, Harrington assigned Thomas Billings (White) to be NDEDI's supervisor, beginning in December 2000. In January 2001, Billings issued a negative performance evaluation of Ndedi that included within its scope the time he worked under Emery. NDEDI objected to the content of the evaluation, as it contained many falsehoods. He wrote a reply to the evaluation and again tried to speak to Harrington about it, but Harrington again refused to speak to NDEDI directly. A KAISER Human Resources Consultant, Donald Richmond (White), was one of the recipients of the evaluation.

11. Billings gave NDEDI an assignment to revise a pre-existing computer program to accomplish a certain task. Although NDEDI produced a program that successfully accomplished the task, Billings wrote shockingly derogatory comments on a printout of the program and sent NDEDI an email stating he was not qualified to be a Data Consultant. NDEDI objected, considering that he had accomplished the assigned task.

12. In late February 2001, Billings and Harrington offered NDEDI the choices to (a) apply for other jobs at KAISER, (b) accept a lower position while he received training to return to being a Data Consultant in a few months, or (c) be fired. NDEDI complained to Richmond in Human Resources that he felt he was being discriminated against, as nothing he had done warranted the criticism he had received and the choices he now faced. Richmond assured NDEDI that he would be reinstated to Data Consultant within a few months, so NDEDI opted to accept

1 the demotion and training. Billings and Harrington also represented that they would evaluate  
2 NDEDI's progress quarterly.

3 13. Although Billings and Harrington had not addressed a pay cut initially, only after  
4 asking NDEDI to write a letter stating he was accepting the demotion, they required that NDEDI  
5 include in the letter accepting a heavy reduction in compensation. The pay cut forced NDEDI to  
6 relocate his wife and child back to France near relatives, but he accepted it on the promise that his  
7 position and pay would be restored within a few months.

8 14. By June 2001, programming in the computer language used by KAISER had  
9 become easy for NDEDI, and he was fulfilling all expectations of him. Billings then asked him to  
10 take a C++ programming class, even though he had already studied this language as a graduate  
11 student and programming in C++ was not part of his job description. Still, NDEDI agreed to take  
12 the class because Billings said he would be reinstated as a Data Consultant after he completed the  
13 class. Richmond also assured him that the reinstatement was imminent.

14 15. NDEDI had to remind Billings that he had agreed to do quarterly performance  
15 evaluations, and in June 2001, Billings gave him some cursory, vague comments that hardly  
16 amounted to an evaluation.

17 16. NDEDI easily passed the C++ programming class and showed the grade report to  
18 Billings and Harrington. Though NDEDI prompted Billings for another quarterly evaluation in  
19 both September and October 2001, Billings stalled. NDEDI brought it up several times to  
20 Billings and Richmond, both of whom had lately stopped assuring him that his reinstatement to  
21 Data Consultant was upcoming.

22 17. Finally in November 2001, NDEDI received his next evaluation from both Billings  
23 and another manager, Christopher Martin (White), who had been assigned to monitor his  
24 progress. Martin complimented NDEDI on the job he was doing and stated that NDEDI's  
25 reinstatement to Data Consultant would go forward in December.

26 18. However, after hearing nothing further about his reinstatement, NDEDI's formal  
27 annual performance evaluation in February 2002 contradicted his November quarterly evaluation  
28 and raised issues that had never been brought to his attention in his quarterly evaluations. Martin,



1 who had now apparently taken over as NDEDI's primary supervisor, stated that NDEDI should  
2 forget about the first action plan that was supposed to result in his reinstatement and embark on a  
3 new action plan. NDEDI sought the aid of Harrington, who agreed that the annual evaluation  
4 should be changed, but the changes he brought about were insignificant.

5 19. It was now clear to NDEDI that Billings, Harrington and Martin had no intention  
6 to restore him to Data Consultant and were instead trying to damage his morale and make him  
7 quit by continually changing their expectations. NDEDI complained to two other representatives  
8 of the Human Resources Department, Shryel Joe, and Anita Waller, that he felt he was being  
9 discriminated against and lied to. But Joe simply gave her blessing to Martin's most recent action  
10 plan, which had no specified time frame. Although Waller was supposedly investigating  
11 NDEDI's complaint, nothing came of that investigation.

12 20. In June 2002, NDEDI finally gave up and accepted a Data Consultant position in  
13 an entirely different section of KAISER's operations. His salary was set as a percentage of his  
14 most recent salary, lowering his compensation even further.

15 21. KAISER's failure to follow through on its promises to restore NDEDI's title and  
16 compensation, and its false and derogatory evaluations of his performance, which remain in his  
17 personnel record, have set him back financially and hindered his progress within the KAISER  
18 organization to the present day.

19 22. For the past seven years, until recently, NDEDI essentially single-handedly  
20 reengineered an inadequate process to meet KAISER's data quality and quantity obligations vis-  
21 à-vis the Medi-Cal plan partners and the State of California, despite serious resource constraints  
22 that were well-known to individuals at the highest levels of the organization. The process  
23 involved collecting, digesting and presenting data to secure public funding for the healthcare of  
24 patients who cannot afford to pay full rates.

25 23. This job has entailed computer programming, analyzing data, interfacing with  
26 other KAISER personnel around the state of California (including quite a bit of travel) to  
27 coordinate the collection of data and discuss the information technology needs of his department,  
28 devising the methodology for processing and packaging the data, and submitting the data to the

1 applicable entities.

2 24. At times, NDEDI's managers' unethical demands regarding data integrity severely  
3 stressed NDEDI, as he sought to stay compliant with federal and state rules pertaining to data  
4 processing and submission for capitated payments. When NDEDI sought to remove the rules  
5 violations from the system, he was routinely opposed by managers who were inexperienced in the  
6 process NDEDI was overseeing and were misguided by their motivation for self-promotion.

7 25. Over that seven-year period, the number of Directors overseeing NDEDI's area of  
8 responsibility increased from one to four. But never during that time did NDEDI himself receive  
9 any consideration for any of those Directorships, or any kind of promotion for that matter,  
10 although he was the only person with the educational background, experience and knowledge to  
11 perform or fully understand the work he was doing.

12 26. For years, NDEDI advised the Directors and KAISER Human Resources  
13 personnel that he was stretched very thin and that there should be several more people sharing the  
14 various tasks that he was handling all by himself. He also expressed that he felt he was  
15 underpaid. But only minor or negligible support was authorized, and his compensation only  
16 increased in minor annual increments.

17 27. NDEDI worked long hours under constant stress, including on weekends, taking  
18 little time off, to get the data he needed, present it in a way to maximize the funds KAISER  
19 received, and meet government deadlines and requirements. He worked much more than eight  
20 hours per day and 40 hours per week, often without taking breaks of more than a few minutes,  
21 and eating while working or traveling for work.

22 28. Although NDEDI's work involved some discretion as to the creation of a system  
23 and programs to accomplish the data processing tasks, the majority of his work time was spent in  
24 the relatively routine, non-discretionary tasks of gathering and processing data.

25 29. Over those seven years, NDEDI exceeded pre-established expectations, as his  
26 performance reviews show. He oversaw the Medi-Cal process area, ensuring KAISER met its  
27 obligations to receive funding. KAISER always received the funds it sought.

28 30. Around mid-2006, a new Director, ISAAC, was appointed. She made it a point to



1 meet NDEDI right away, and she quickly started asking him all about his system and the work he  
2 did. Since he was so busy during the day, they met outside work hours and off-site when she  
3 picked his brain for his systemic knowledge. He told her in the 2008 to 2010 time period what he  
4 had told others: that his role needed to be divided into several parts, and he outlined his vision of  
5 a new organization of people and roles, which he would naturally supervise since he was the one  
6 who knew all the operational parts and had been responsible for everything for years.

7 31. Over time, ISAAC began to show romantic interest in NDEDI. She stated to him  
8 both explicitly and implicitly that she might be able to help get the support, position and  
9 compensation he sought if he committed more to their personal relationship. He did not feel the  
10 same attraction to her, but he nevertheless indulged her romantic interest to an extent, in the  
11 hopes that she would follow through on being his advocate to obtain assistance and relief for him,  
12 as well as to achieve recognition of his contributions to the department through promotion and a  
13 raise.

14 32. Over the past couple years since Obamacare was enacted, the administrative  
15 requirements for obtaining government funding have grown even stricter. NDEDI had to make  
16 demands for more data, and the need for additional personnel support became critical. NDEDI  
17 communicated repeatedly with management verbally and by email about the necessity to establish  
18 some ownership of the process in order to get much-needed resources. Unfortunately, he was  
19 ignored, as he had been many other times.

20 33. Finally, in December 2012, NDEDI told ISAAC he was frustrated by the lack of  
21 any further resources being added to his department, that he did not have the data he needed to  
22 satisfy increasing administrative demands, and he could not continue to handle everything  
23 himself. Throughout 2012 and into 2013, NDEDI made excuses to ISAAC for not advancing  
24 their personal relationship further.

25 34. After the December 2012 conversation, more individuals (including Directors) got  
26 added to the Medi-Cal process and discussion; eventually, the organization morphed into  
27 essentially what NDEDI had mapped out for ISAAC. Later, a fourth Director got added,  
28 although it was not the individual NDEDI had recommended. NDEDI's choice was on bad terms

1 with ISAAC, and she wound up being relegated to a lesser role while another person was hired  
2 into the fourth Director role. The timing and the resulting structure, which tracked the plan  
3 NDEDI had laid out to ISAAC (except for the identity of the fourth Director), very much  
4 suggested that ISAAC had a significant hand in the reorganization.

5 35. NDEDI was not promoted or given a pay increase. Instead, he was ordered to  
6 transfer all his knowledge, methods, contacts, etc. to the other personnel. He was also told that  
7 for "political" reasons he would need to have a less prominent role in the Medi-Cal process in  
8 terms of communications with other people in the KAISER organization and the government.  
9 The individuals hired into the process area were not as educationally or experientially qualified as  
10 NDEDI, yet they were expected to assume essentially the same role.

11 36. In July 2013, NDEDI informed ISAAC he was disappointed that the  
12 reorganization was not resulting in any advancement for him, but instead seemed to be moving  
13 him in the direction of irrelevance. She responded that she had told him "everything needs to  
14 change here," which he took to mean that she was connecting his professional standing to his  
15 failure to accede to her demands for greater intimacy. That marked their last direct  
16 communication.

17 37. One co-worker who recently left KAISER informed NDEDI after he quit that the  
18 man who was at the time NDEDI's supervisor, Greg Jaeger (White), had instructed him to  
19 monitor NDEDI's comings and goings. The co-worker said he felt sorry for NDEDI because he  
20 had been overwhelmed with work and not given the help he needed, and he suggested that  
21 NDEDI quit.

22 38. NDEDI also received information from an administrative employee with access to  
23 salary information implying that his compensation was actually less than people who had just  
24 joined the department and were less qualified than him in terms of education and experience. A  
25 Human Resources Consultant that NDEDI contacted about feeling he was not being fairly  
26 rewarded for single-handedly manning the department for years agreed that he deserved a  
27 promotion and suggested that he contact certain individuals in positions of authority to try to get  
28 the ball rolling. But none of NDEDI's attempts to elicit support from those individuals panned



1 out.

2 39. In early October 2013, a Black manager who had recently resigned from KAISER  
3 intimated to NDEDI that he had left because he had been discriminated against on the basis of his  
4 race. He asserted there was a general resistance to promotions of Black employees in the  
5 department, especially originating from a certain Senior Vice President. He reported to NDEDI  
6 that when he complained to the CEO, the Senior Vice President started making his job even more  
7 difficult, forcing him to quit.

8 40. Fearing that he was having his role diminished and being asked to train others to  
9 replace him, in late August and September 2013, NDEDI communicated verbally and by email to  
10 his current direct supervisor, Michael Herriot (White) (who replaced Jaeger), and the Managing  
11 Director, Paul Macari (White), that he felt that all he had contributed to the department over the  
12 past seven years warranted a pay raise and promotion as part of the reorganization that was taking  
13 place. He also asked for clarification of his role after the reorganization. Macari and Herriot  
14 denied any raise or promotion to NDEDI, despite the facts that he was the source of all the  
15 knowledge that he was being ordered to pass on to the new Data Consultants and had held the  
16 department together for years before anyone else came along.

17 41. In late August 2013, NDEDI was asked to accelerate the training and essentially  
18 transfer all the rest of the remaining knowledge he had that others lacked. During this period, he  
19 grew increasingly anxious about being phased out of the organization, so he kept asking Herriot  
20 and Macari for clarification of his role going forward, without receiving any definitive response.  
21 The promises they made regarding a prominent role for NDEDI in the Medi-Cal process area, as  
22 well as appropriate compensation, were not kept. In fact, he was told in October 2013 he would  
23 no longer have any role in the Medi-Cal process, which he had carried on for years all by himself.

24 42. NDEDI was asked to continue the process of transferring knowledge even during  
25 the paid time off he took to address his ailing father's needs in September 2013. The rest of the  
26 personnel in the department were provided NDEDI's itinerary and telephone and email contact  
27 information for the entire time he would be away. Management sent emails, forcing him to check  
28 in every day. An international line was added to his cell phone at the request of Macari and

1 Herriot, to ensure that he would call in every day (which he did) and that he could be reached by  
2 phone. NDEDI was not paid his salary during this absence, but instead was charged PTO.

3 43. NDEDI filed a complaint of discrimination with the Department of Fair  
4 Employment and Housing and received a right to sue letter dated October 21, 2013.

5 **FIRST CAUSE OF ACTION**

6 **(Discrimination—KAISER)**

7 44. NDEDI realleges and incorporates by reference the allegations set forth in the  
8 foregoing paragraphs of this Complaint.

9 45. NDEDI is the victim of a "glass ceiling" that Kaiser has continuously imposed on  
10 him because of his race, color and national origin, which is part of a pattern and practice of such  
11 conduct within the KAISER organization.

12 46. NDEDI never achieved a managerial position or fair compensation because  
13 KAISER did not want a Black man with a French accent to represent Medi-Cal operations going  
14 forward as increasing administrative requirements and Obamacare promised to increase the  
15 activity and prominence of the department.

16 47. NDEDI has been continuously victimized by institutional racial prejudice, in the  
17 form of professional sabotage, false promises, disparate treatment in compensation and other  
18 terms and conditions of employment, unreasonable expectations in the face of woefully  
19 inadequate resources, and refusal to recognize his superior efforts, dedication, and qualifications,  
20 dating back to 2000. KAISER's discriminatory treatment is in violation of the Fair Employment  
21 and Housing Act ("FEHA"), Gov. Code § 12940(a).

22 48. As a result of such discrimination, NDEDI has suffered lost compensation,  
23 benefits, and advancement opportunities, and has experienced severe emotional distress,  
24 including anxiety, humiliation, anger, depression, sleeplessness and consequent physical effects  
25 and impacts on his personal relationships. KAISER is liable for compensating NDEDI for these  
26 damages in amounts subject to proof.

27 49. KAISER's actions were committed with malice, fraud and/or oppression, with the  
28 intent to injure NDEDI or with reckless disregard for the injury its actions would cause to



1 NDEDI. As such, KAISER is liable to NDEDI for punitive damages in an amount sufficient to  
2 punish it for its wrongs.

### 3 **SECOND CAUSE OF ACTION**

#### 4 **(FEHA Retaliation—KAISER)**

5 50. NDEDI realleges and incorporates by reference the allegations set forth in the  
6 foregoing paragraphs of this Complaint.

7 51. Ever since NDEDI first complained to Human Resources of discrimination in  
8 2001, he has been subjected to a continuous pattern of retaliation in the form of professional  
9 sabotage, false promises, disparate treatment in compensation and other terms and conditions of  
10 employment, unreasonable expectations in the face of woefully inadequate resources, and refusal  
11 to recognize his superior efforts, dedication, and qualifications. KAISER's retaliatory treatment  
12 is in violation of FEHA, Gov. Code § 12940(h).

13 52. As a result of such retaliation, NDEDI has suffered lost compensation, benefits,  
14 and advancement opportunities, and has experienced severe emotional distress, including anxiety,  
15 humiliation, anger, depression, sleeplessness and consequent physical effects and impacts on his  
16 personal relationships. KAISER is liable for compensating NDEDI for these damages in amounts  
17 subject to proof.

18 53. KAISER's actions were committed with malice, fraud and/or oppression, with the  
19 intent to injure NDEDI or with reckless disregard for the injury its actions would cause to  
20 NDEDI. As such, KAISER is liable to NDEDI for punitive damages in an amount sufficient to  
21 punish it for its wrongs.

### 22 **THIRD CAUSE OF ACTION**

#### 23 **(Whistleblower Retaliation—KAISER)**

24 54. NDEDI realleges and incorporates by reference the allegations set forth in the  
25 foregoing paragraphs of this Complaint.

26 55. Ever since NDEDI refused to participate in unlawfully falsifying data and made  
27 efforts to repair the gaps in data integrity for KAISER, which made it more difficult to obtain  
28 desired funding, he has been subjected to a continuous pattern of retaliation in the form of false

1 promises, disparate treatment in compensation and other terms and conditions of employment,  
2 unreasonable expectations in the face of woefully inadequate resources, refusal to recognize his  
3 superior efforts, dedication, and qualifications, and being removed from the Medi-Cal process for  
4 “political” reasons. KAISER’s retaliatory treatment is in violation of Labor Code § 1102.5(c).

5 56. As a result of such retaliation, NDEDI has suffered lost compensation, benefits,  
6 and advancement opportunities, and has experienced severe emotional distress, including anxiety,  
7 humiliation, anger, depression, sleeplessness and consequent physical effects and impacts on his  
8 personal relationships. KAISER is liable for compensating NDEDI for these damages in amounts  
9 subject to proof.

10 57. KAISER’s actions were committed with malice, fraud and/or oppression, with the  
11 intent to injure NDEDI or with reckless disregard for the injury its actions would cause to  
12 NDEDI. As such, KAISER is liable to NDEDI for punitive damages in an amount sufficient to  
13 punish it for its wrongs.

#### 14 **FOURTH CAUSE OF ACTION**

##### 15 **(Sexual Harassment—KAISER and ISAAC)**

16 58. NDEDI realleges and incorporates by reference the allegations set forth in the  
17 foregoing paragraphs of this Complaint.

18 59. NDEDI’s refusal to submit to ISAAC’s advances directly resulted, for a long time,  
19 in her refusal to champion his receipt of needed staffing assistance. NDEDI’s refusal to submit to  
20 ISAAC’s advances also meant that, once ISAAC did initiate a reorganization, NDEDI was denied  
21 his rightful leadership role in the new organization, and instead was relegated to being a trainer  
22 and minor role player in the department. As such, ISAAC’s actions constituted sexual  
23 harassment of NDEDI of the quid pro quo variety, pursuant to FEHA, Gov. Code § 12940(j).

24 60. Pursuant to FEHA, ISAAC is personally liable for her sexual harassment of  
25 NDEDI. Moreover, as ISAAC is a Director and was a superior in the line of authority over  
26 NDEDI, KAISER is vicariously liable for her actions.

27 61. As a result of such harassment, NDEDI has suffered lost compensation, benefits,  
28 and advancement opportunities, and has experienced severe emotional distress, including anxiety,



1 humiliation, anger, depression, sleeplessness and consequent physical effects and impacts on his  
2 personal relationships. KAISER and ISAAC are liable for compensating NDEDI for these  
3 damages in amounts subject to proof.

4 62. ISAAC's actions were committed with malice, fraud and/or oppression, with the  
5 intent to injure NDEDI or with reckless disregard for the injury her actions would cause to  
6 NDEDI. As such, both ISAAC and KAISER are liable to NDEDI for punitive damages in an  
7 amount sufficient to punish them for their wrongs.

#### 8 **FIFTH CAUSE OF ACTION**

##### 9 **(Unpaid Overtime—KAISER)**

10 63. NDEDI realleges and incorporates by reference the allegations set forth in the  
11 foregoing paragraphs of this Complaint.

12 64. NDEDI has been misclassified as an exempt employee throughout his employment  
13 at KAISER. His duties did not satisfy the criteria of any exemption from overtime and other  
14 wage/hour requirements.

15 65. NDEDI routinely worked in excess of eight hours per work day and 40 hours per  
16 work week, sometimes exceeding 12 hours in a work day and eight hours on a seventh  
17 consecutive work day. However, he only received his fixed salary in all pay periods, never  
18 receiving additional compensation for the extra hours.

19 66. Accordingly, KAISER is liable to pay NDEDI for all such unpaid overtime  
20 worked at time-and-a-half or double time (as the case may be) of his regular rate of pay, plus  
21 interest, pursuant to Labor Code § 1194(a).

#### 22 **SIXTH CAUSE OF ACTION**

##### 23 **(Failure to Provide Meal and Rest Breaks—KAISER)**

24 67. NDEDI realleges and incorporates by reference the allegations set forth in the  
25 foregoing paragraphs of this Complaint.

26 68. As previously alleged, NDEDI was improperly classified as exempt. As a non-  
27 exempt employee, he was entitled to 10-minute rest breaks for every four hours worked (or major  
28 portion thereof) and 30-minute uninterrupted meal breaks for every five hours worked, pursuant

1 to Labor Code § 512.

2 69. By virtue of being so burdened with work and under pressure to finish within  
3 certain timeframes, NDEDI was routinely forced to work without taking full 10-minute rest  
4 breaks and 30 minute work-free meal breaks. As KAISER expected NDEDI to accomplish so  
5 much on his own, without providing him adequate support, it effectively deprived him of any  
6 reasonable opportunity to take those breaks.

7 70. For each day on which KAISER failed to provide one or more rest breaks, NDEDI  
8 was entitled to receive (but never did receive) one additional hour of pay at his regular rate,  
9 pursuant to Labor Code § 226.7. Also pursuant to that section, NDEDI was entitled to receive  
10 (but did not receive) one additional hour of pay at his regular rate for each day on which KAISER  
11 failed to provide him one or more 30-minute work-free meal breaks. KAISER is now liable to  
12 pay those meal and rest break premiums, plus interest.

13 **SEVENTH CAUSE OF ACTION**

14 **(Unfair Competition—KAISER)**

15 71. NDEDI realleges and incorporates by reference the allegations set forth in the  
16 foregoing paragraphs of this Complaint.

17 72. KAISER's failure to pay NDEDI overtime wages and provide him meal and rest  
18 breaks constituted unfair and unlawful business practices pursuant to Business & Professions  
19 Code § 17200, et seq. NDEDI is now entitled to restitution of such unpaid overtime and one-hour  
20 meal and rest break premiums extending back four years.

21 **EIGHTH CAUSE OF ACTION**

22 **(Unpaid Salary—KAISER)**

23 73. NDEDI realleges and incorporates by reference the allegations set forth in the  
24 foregoing paragraphs of this Complaint.

25 74. NDEDI performed work at KAISER's behest during the paid time off he took in  
26 September 2013, as he was still monitored and required to communicate with his employer every  
27 day he was away. If he was an exempt employee, NDEDI would be entitled to his full salary  
28 during this period, without being charged any paid time off. Accordingly, NDEDI seeks payment



1 of his full salary, without it being charged as paid time off, during the period he was attending to  
2 his father's illness, if he is found to have been properly classified as an exempt employee.

3 **PRAYER**

4 **WHEREFORE**, NDEDI respectfully prays for relief as follows:

- 5 1. Compensatory damages, including both general and special damages, according to  
6 proof;
- 7 2. Punitive damages;
- 8 3. Unpaid overtime wages, according to proof, plus interest;
- 9 4. Unpaid meal and rest break premiums, according to proof, plus interest;
- 10 5. Payment of his full salary, without being charged paid time off, during his personal  
11 absence in September 2013, if he is found to be properly classified as an exempt employee;
- 12 6. Costs of suit incurred;
- 13 7. Reasonable attorneys' fees pursuant to statute; and
- 14 8. Such other relief as the Court may deem just and proper.

15 DATED: October 30, 2013

Respectfully submitted,

LAW OFFICES OF CODY JAFFE

By: 

Cody Jaffe

Attorney for Plaintiff  
ETIENNE NDEDI

20 **DEMAND FOR JURY TRIAL**

21 NDEDI hereby demands a jury trial to adjudicate the foregoing causes of action and  
22 issues.

23 DATED: October 30, 2013

Respectfully submitted,

LAW OFFICES OF CODY JAFFE

By: 

Cody Jaffe

Attorney for Plaintiff  
ETIENNE NDEDI