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JOHN DOE
7

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **FOR THE COUNTY OF LOS ANGELES, CENTRAL DISTRICT**
10

11 JOHN DOE,¹

12 Plaintiff,

13 vs.

14 OGLETREE, DEAKINS, NASH,
SMOAK & STEWART, P.C.,
15 JOHNNIE JAMES, and DOES 1 to
16 100, inclusive,

17 Defendants.
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) Case No.:

) **PLAINTIFF JOHN DOE'S COMPLAINT
FOR DAMAGES FOR:**

- (1) **SEXUAL HARASSMENT IN VIOLATION OF FEHA (HOSTILE WORK ENVIRONMENT);**
- (2) **QUID PRO QUO SEXUAL HARASSMENT;**
- (3) **DISCRIMINATION ON THE BASIS OF RACE, NATIONAL ORIGIN, AND/OR COLOR IN VIOLATION OF FEHA;**
- (4) **HARASSMENT ON THE BASIS OF RACE, NATIONAL ORIGIN, AND/OR COLOR IN VIOLATION OF FEHA;**
- (5) **DISCRIMINATION ON THE BASIS OF SEXUAL ORIENTATION IN VIOLATION OF FEHA;**
- (6) **DISCRIMINATION ON THE BASIS OF MARITAL STATUS IN VIOLATION OF FEHA;**
- (7) **VIOLATION OF THE CALIFORNIA EQUAL PAY ACT:**

27 ¹ Because of the nature of the allegations herein, plaintiff is identified by a pseudonym in order to
28 preserve his confidentiality and to avoid any potential opprobrium, pursuant to applicable law, includ-
ing *Starbucks Corp. v. Superior Ct.* (2008) 168 Cal.App.4th 1436.

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-) (8) **FAILURE TO PREVENT DISCRIMINATION AND HARASSMENT IN VIOLATION OF FEHA;**
 -) (9) **WRONGFUL CONSTRUCTIVE TERMINATION OF EMPLOYMENT IN VIOLATION OF PUBLIC POLICY;**
 -) (10) **VIOLATION OF LABOR CODE § 1102.5;**
 -) (11) **INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS;**
 -) (12) **RETALIATION FOR ENGAGING IN PROTECTED ACTIVITY;**
- DEMAND FOR JURY TRIAL**

Plaintiff, John Doe, alleges, on the basis of personal knowledge and/or information and belief:

SUMMARY

This is an action by plaintiff, John Doe (“plaintiff” or “Doe”), whose employment with defendant Ogletree, Deakins, Nash, Smoak & Stewart, P.C. (“Ogletree”) was wrongfully terminated. Plaintiff brings this action against defendants for economic, non-economic, compensatory, and punitive damages, pursuant to Civil Code section 3294, pre-judgment interest pursuant to Code of Civil Procedure section 3291, and costs and reasonable attorneys’ fees pursuant to Government Code section 12965(b) and Code of Civil Procedure section 1021.5.

PARTIES

1. *Plaintiff:* Plaintiff Doe is, and at all times mentioned in this Complaint was, a resident of the County of Los Angeles, California.
2. *Defendants:* Defendant Ogletree is, and at all times mentioned in this Complaint was, authorized to operate by the State of California and the United States govern-

1 ment and authorized and qualified to do business in the County of Los Angeles. Defen-
2 dant’s place of business, where the following causes of action took place, was and is in
3 the County of Los Angeles, at 400 South Hope Street, Suite 1200, Los Angeles,
4 California 90071. Defendant Johnnie James (“defendant” or “James”) is, and at all times
5 mentioned in this Complaint was, a supervisor and managing agent of defendants.
6 Defendant James is, and at all times mentioned in this Complaint was, a resident of Los
7 Angeles County, California.

8 3. *Doe defendants:* Defendants Does 1 to 100, inclusive, are sued under fictitious
9 names pursuant to Code of Civil Procedure section 474. Plaintiff is informed and be-
10 lieves, and on that basis alleges, that each of the defendants sued under fictitious names is
11 in some manner responsible for the wrongs and damages alleged below, in so acting was
12 functioning as the agent, servant, partner, and employee of the co-defendants, and in tak-
13 ing the actions mentioned below was acting within the course and scope of his or her auth-
14 ority as such agent, servant, partner, and employee, with the permission and consent of the
15 co-defendants. The named defendants and Doe defendants are sometimes hereafter re-
16 ferred to, collectively and/or individually, as “defendants.”

17 4. *Relationship of defendants:* All defendants compelled, coerced, aided, and/or
18 abetted the discrimination, retaliation, and harassment alleged in this Complaint, which
19 conduct is prohibited under California Government Code section 12940(i). All defen-
20 dants were responsible for the events and damages alleged herein, including on the fol-
21 lowing bases: (a) defendants committed the acts alleged; (b) at all relevant times, one or
22 more of the defendants was the agent or employee, and/or acted under the control or
23 supervision, of one or more of the remaining defendants and, in committing the acts
24 alleged, acted within the course and scope of such agency and employment and/or is or
25 are otherwise liable for plaintiff’s damages; (c) at all relevant times, there existed a unity
26 of ownership and interest between or among two or more of the defendants such that any
27 individuality and separateness between or among those defendants has ceased, and de-
28 fendants are the alter egos of one another. Defendants exercised domination and control

1 over one another to such an extent that any individuality or separateness of defendants
2 does not, and at all times herein mentioned did not, exist. Adherence to the fiction of the
3 separate existence of defendants would permit abuse of the corporate privilege and
4 would sanction fraud and promote injustice. All actions of all defendants were taken by
5 employees, supervisors, executives, officers, and directors during employment with all
6 defendants, were taken on behalf of all defendants, and were engaged in, authorized, rati-
7 fied, and approved of by all other defendants.

8 5. Defendant Ogletree both directly and indirectly employed plaintiff Doe, as
9 defined in the Fair Employment and Housing Act (“FEHA”) at Government Code
10 section 12926(d).

11 6. In addition, defendant Ogletree compelled, coerced, aided, and abetted the
12 discrimination, which is prohibited under California Government Code section 12940(i).

13 7. Finally, at all relevant times mentioned herein, all defendants acted as agents of
14 all other defendants in committing the acts alleged herein.

15
16 **FACTS COMMON TO ALL CAUSES OF ACTION**

17 8. *Plaintiff’s hiring:* Doe is a 37-year-old, Mexican-American, gay male who
18 began working as a staff attorney and, later, of counsel at Ogletree.

19 9. *Plaintiff’s job performance:* Doe began his employment at Ogletree on July 13,
20 2015, and throughout his employment performed his duties above expectations, was well
21 liked by others, and excelled in his position.

22 10. *Plaintiff’s protected status and activity:*

- 23 a. Plaintiff Doe is Hispanic/Latino.
- 24 b. Plaintiff is gay/homosexual.
- 25 c. Plaintiff is married to a man.
- 26 d. Plaintiff complained of unlawful actions by Defendants

27 11. *Defendants’ adverse employment actions and behavior:*

- 28 a. On June 22, 2015, Doe accepted defendants’ job offer and agreed to a start

1 date of July 13, 2015, as a staff attorney. Defendant James, a hiring partner, and Betsy
2 Johnson (“Johnson”), the managing partner of the Ogletree Los Angeles office, were key
3 decision-makers in the decision to hire Doe. James and Johnson told Doe that, as a staff
4 attorney, he would have fewer responsibilities than a regular associate, fewer billing
5 hours, and, as a result, lower pay.

6 b. Ogletree bills itself as one of the largest employment law firms representing
7 employers in the country. Despite providing legal representation to companies of all
8 sizes, specifically in the area of employment law, and purporting to value diversity,
9 Ogletree has an ongoing practice of discriminating against and harassing its own minori-
10 ty employees, specifically its own minority attorneys. Doe was no exception to
11 Ogletree’s discriminatory practices.

12 c. James is a partner in his late 50s or early 60s who is gay and married. In
13 August of 2015, Doe had his first work lunch with James. James immediately asked
14 Doe about his personal life and whether he were dating anyone, and Doe responded that
15 he had a boyfriend. During that lunch, James told Doe that he could tell that Doe used to
16 be a “wild boy,” setting the stage for future inappropriate conversations with Doe. Doe
17 thought the comment was strange and inappropriate, but laughed it off to ease the
18 awkward situation.

19 d. In or around September of 2015, James told Doe that he wanted to take him to
20 lunch during work. During lunch, James inquired more into Doe’s relationship with his
21 boyfriend and learned that Doe was engaged. As if he were jealous, James told Doe that
22 he needed to be with someone who was “wilder” and that, if Doe were planning to get
23 married, that meant that he was “not serious about [his] career.” James then said that,
24 because of Doe’s upcoming marriage, the firm would not consider him to become a
25 regular associate (as James had previously said Doe should become) and that Doe would
26 need to remain a staff attorney until he was serious about his career. In the same
27 conversation, James told Doe that he enjoyed three-way sex and was looking for a third
28 person to have three-way sex with him and his husband. James disclosed further details

1 about his personal sex life with his husband, including when they first had sex and that
2 James was trying to get his husband more open to the idea of three-way sex and/or group
3 sex. James also discussed the fact that he enjoyed watching pornography and asked if
4 Doe did, too. Doe felt so anxious about the conversation that he asked that they wrap up
5 lunch and return to the office.

6 e. At the firm’s annual retreat that year, around October 3, 2015, while Doe was
7 eating with partner Dawn Collins and four other associates, he complained to his
8 colleagues and to Collins specifically that James had disclosed personal details of his sex
9 life to Doe and that this was extremely inappropriate and made him feel very uncomfort-
10 able. The next day, Doe’s attorney colleague told him, “Wow, you made a sexual ha-
11 rassment complaint about Johnnie last night.” Doe feared that this was going to get back
12 to James and that James was going to get angry and retaliate against him. His concerns
13 later proved valid.

14 f. Despite the fact that Doe had made a sexual harassment complaint to a partner,
15 Ogletree—an employment law firm—chose to ignore Doe’s complaints and retaliate
16 against him. Later in October of 2015, after the annual retreat was over, James called
17 Doe to his office under the pretense of giving him an assignment. Instead, he sat Doe
18 down and said, “Don’t you ever talk about my personal life to anyone ever again; got
19 it?” True to Doe’s fears, after James found out about Doe’s sexual harassment complaint
20 against him, he stopped speaking with Doe and did not assign him any work for
21 approximately nine months. Despite that Johnson, the office’s managing partner learned
22 of Doe’s complaints, Ogletree never conducted any investigation, and no one at Ogletree
23 ever spoke to Doe about his complaints. Ogletree also took no action against James and
24 did not discipline him, despite his improper and illegal conduct toward Doe.

25 g. Doe got married in the summer of 2016. In the fall of that year, James
26 resumed speaking with Doe and, with that, continued his harassment of Doe. By the
27 winter of 2016, he was back to inviting Doe to lunches and dinners. Doe went along
28 with James’s invitations and communicated with him out of fear that, if he did not,

1 James would retaliate against him again.

2 h. In or around November of 2016, when an associate attorney went on leave,
3 Doe agreed to take over several of the associate's cases. By December, he had begun
4 running cases full-time again and taking on the case load of a full-fledged associate.
5 This is even though Ogletree had previously premised Doe's lower salary on the basis
6 that he would not do the work of a regular associate.

7 i. Leading up to New Year's Day, January 1, 2017, James began sending Doe a
8 series of messages in which he asked Doe to come to his house for New Year's Eve.
9 Doe politely declined because his husband was ill, but James would not let the issue go.
10 He told Doe that he should put his sick husband to bed and then hop into an Uber to get
11 to James's home on New Year's Eve night. He promised Doe that he would have him
12 home by 1:00 a.m., before his husband "ever woke up." Doe took this communication as
13 a direct proposition by James. After he repeatedly declined James's demands, James
14 texted Doe that he should at least "watch some porn" at home.

15 j. At or around this time, James began referring to Doe as the "cute Latino." He
16 would also tell Doe about his sexual fantasies involving Latino men.

17 k. On January 19, 2017, Doe had a meeting with a partner he worked with
18 regularly to discuss work-related matters. During this conversation, the partner told Doe
19 that he was a "unicorn" because he is gay and Latino and that there was no one else at
20 the firm like him. Doe felt targeted by Ogletree and as if he were being singled out
21 because of his race and sexual orientation.

22 l. On or around January 20, 2017, Doe received an excellent performance
23 evaluation for 2016, including comments that he ultimately should be considered to be a
24 partner. There was no mention of in the review that Doe's billing hours were low, and
25 there was no discussion of any performance issue whatsoever. During this conversation,
26 Doe raised with Johnson the complaint that he was doing the same work as associates in
27 his office, yet he was not being paid equally with peers or even junior attorneys because
28 his title was still staff attorney. He demanded equal pay and the requisite title to match

1 his work. Johnson brushed off Doe’s complaints and told him she would “get back to
2 him.”

3 m. On January 23, 2017, James asked Doe to go out for a happy hour drink after
4 work at a restaurant in the building they worked in. Again, Doe felt as if he could not
5 refuse. At the restaurant, James once again told Doe that he enjoyed watching porn with
6 his husband and that he was interested in finding someone to have three-way sex with
7 them, particularly when they went on vacation. He also brought up the possibility of
8 Doe’s traveling with James and his husband on a trip abroad. Yet again, he asked Doe
9 if he were interested in watching porn and if he liked three-way sex, at which point Doe
10 tried to change the subject. Then James told Doe, “Now that you are married, don’t
11 expect to start having kids and working a reduced schedule and ever become a partner at
12 the firm.” Doe was shocked at James’s inappropriate remarks. However, he later
13 discovered that James’s comments were consistent with Ogletree’s treatment of
14 attorneys who started families and took maternity and/or paternity leave. Ogletree has
15 consistently denied attorneys compensation increases and advancement opportunities
16 after they have children, and James was confirming to Doe that this, indeed, is Ogletree’s
17 practice.

18 n. On February 17, 2017, Johnson visited Doe at his office to discuss his trans-
19 ition to of counsel/associate—a role to match the work he was already doing. During
20 that discussion, Johnson—for the first time—informed Doe that his hours were low in
21 2016 and that, as a result, the firm was not going to change his title or increase his salary.
22 She said that nevertheless he was “welcome” to continue taking on cases and doing the
23 work of a regular associate/of counsel without the title or compensation. Doe responded,
24 “It’s unfair for me to do the same work as my peers and not get paid for it.” Johnson
25 coldly replied, “That’s just the way it is.” Doe asked if they could revisit the issue at
26 mid-year. Johnson said that, if his hours were on track by then, “of course” the firm
27 would change his title and increase his pay.

28 o. On February 19, 2017, Doe e-mailed Johnson, summarizing their discussion.

1 He further wrote that, because he was not being considered a regular associate/of counsel
2 yet, he did not think he should have the corresponding work load. Johnson ignored the
3 e-mail. Doe continued to take on cases full-time and was working longer hours than the
4 average associate/of counsel in the office. He continued to be paid less than his peers,
5 and more junior attorneys, for doing the same work. Not coincidentally, Doe was the
6 only gay, Latino attorney in the Los Angeles office with his level of experience.

7 p. On February 24, 2017, Doe once again reluctantly accepted James’s invitation
8 to go out for drinks after work. While they were having drinks, James began discussing a
9 “go-go boy” (*i.e.*, a male stripper) with whom he was “obsessed.” In an apparent attempt
10 to arouse Doe, James pulled out his cell phone and began playing a graphic porn scene of
11 two men having sex. Doe was in shock, looked away, and told James he did not want to
12 watch it. James put his phone away, but continued to brag to Doe about his sexual
13 exploits with the go-go dancer, specifically how James “got [his] dick sucked in a gym
14 shower stall at the Gold’s Gym in downtown LA” by the dancer. He then told Doe, “I
15 guess I just told you that I cheated on my husband,” which Doe interpreted as a suggestion
16 that James wanted to cheat on his husband with Doe. James would not drop the subject,
17 and therefore Doe told him that he was ready to call it a night. As the two walked to their
18 cars, James informed Doe that the reason he stopped giving him work for many months
19 was that, after the firm retreat in October of 2015, partner Collins (to whom Doe had made
20 his original sexual harassment complaint) had gone to James’s office and told him, “Hey,
21 Johnnie, I hear you like three-ways,” and that James was furious with Doe because he
22 knew that Collins was referring to what James had shared with him. Doe’s fears were
23 confirmed—his complaint about James had triggered James’s refusal to provide him with
24 any work. Not coincidentally, Ogletree then used Doe’s purported “hours” as a pretextual
25 reason to pay him less. (Yet a straight, white associate who missed the 2017 billable
26 requirement by over 450 hours was one of two attorneys in the LA office recommended
27 for partner consideration.)

28 q. Over the next several months, James continued his inappropriate, harassing

1 behavior toward Doe. For example, he would e-mail Doe from his Ogletree work
2 account about getting “worked up” in a sexual manner before work and needing to take a
3 “cold shower” before he could come to the office. He also described to Doe how he
4 liked to walk around “naked”. On another occasion, James told Doe he was horny and
5 that he was interested in “doing some banging right about now.” In addition, James told
6 Doe about his attraction to a security guard in the building in which they worked. He
7 disclosed to Doe that the security guard had sent James explicit videos of the guard
8 having sex. James also sent Doe half-naked pictures of the security guard. James’s
9 ongoing harassment of Doe occurred in person and through work e-mail.

10 r. On another occasion, on or about March 13, 2017, James asked Doe to engage
11 in an evening of bar-hopping in West Hollywood to flirt with an older gay client from
12 whom James was trying to obtain business. He told Doe that the potential client “loves
13 to play” and insinuated that Doe would be used for the purpose of wooing the client by
14 flirting with him.

15 s. On May 4, 2017, at a going away party for one of many attorneys to leave
16 Ogletree as of late, Doe, unable to contain his frustration about how defendant Ogletree
17 was treating him, complained to another partner about the pay inequity issue he was
18 dealing with at the firm. He told this partner that he was frustrated that he was being
19 paid a lower salary than his peers and that he believed his race and sexual orientation
20 were some of the reasons he was being underpaid. He further complained that similarly
21 situated, straight, white men were doing the same work as Doe, but were being paid
22 more. He also reported to this partner the discriminatory comments James had made to
23 him about how marriage and starting a family would negatively affect Doe’s career.
24 However, the partner did nothing to address Doe’s complaints.

25 t. Doe e-mailed Johnson on May 9, 2017, informing her that he was becoming
26 increasingly frustrated because he was doing to the same work as his peers, but was not
27 being paid for it, and that it was extremely unfair. Johnson ignored him.

28 u. On May 31, 2017, not having received a response to his e-mail to Johnson,

1 Doe forwarded his e-mail to Johnson again. Yet again, she ignored him.

2 v. On June 12, 2017, Johnson finally called Doe to her office to discuss his
3 formal title change to either of counsel or associate to coincide with the work he was
4 already doing. She informed Doe that defendants were willing to give him his new title
5 and pay, effective July 1, 2017. She would not, however, tell Doe what his new compen-
6 sation would be during the meeting.

7 w. On June 20, 2017, Doe e-mailed Johnson yet again to follow up on the new
8 title and compensation he was promised. The following day, June 21, 2017, Johnson
9 called him into her office. During the meeting, she informed Doe that the firm had de-
10 cided that he was going to be of counsel (a role more senior than an associate), but that
11 his salary was going to be at least \$30,000.00 less than his equivalent years of experience
12 and that he would be paid less than even associates at his seniority level. Ogletree is a
13 lock-step firm, so Doe was well aware what other attorneys in his office were paid for
14 having his level of experience. He was stunned that he was being offered barely any
15 increase in pay from his staff attorney's salary and that he was being paid less than all of
16 his peers. To make matters worse, Johnson told Doe that, unlike every other attorney at
17 his level, he would have to wait five years into his tenure at Ogletree before partner
18 consideration. Non-gay, non-Latino attorneys at Doe's level of experience only have to
19 wait two years before partner consideration. Doe went straight to multiple partners to
20 complain about the unfair treatment surrounding his pay, including partner Joseph Clees,
21 a member of Ogletree's board of directors. They all agreed that Doe was being treated
22 unfairly and agreed to speak to Johnson and others about it. At least one partner told
23 Doe that Ogletree was flat out discriminating against him because he is Latino and/or
24 gay.

25 12. Further, at or around this time, Doe found out that he would be the lowest paid
26 of counsel in the Los Angeles office (and that the second-lowest paid of counsel in the
27 office was also gay). Again, Ogletree made the decision to pay Doe less than his
28 experience dictated pursuant to Ogletree guidelines only after he had previously com-

1 plained about sexual harassment and pay inequity at the firm. This is consistent with
2 Ogletree’s handling of employee complaints made by minority attorneys – by taking
3 adverse employment actions against them. For example, during Doe’s employment,
4 Ogletree terminated an African American associate after she made complaints about race
5 and gender discrimination. Further, on June 30, 2017, Ogletree abruptly dismissed two
6 female partners from the firm after their ongoing complaints about pay inequity.
7 (Notably, Ogletree now has a \$300 million gender discrimination lawsuit filed against
8 them in a nationwide class action case: *Knepper v. Ogletree Deakins, et al.* Case No.18-
9 cv-00303, U.S. District Court for the Northern District of California.)

10 13. In late June 2017, Doe spoke with James and voiced his pay inequity complaint
11 to him. He pointed out that it was unfair that he was not paid the same as an associate
12 junior to him named Zander. However, James yelled at him, “Don’t you ever compare
13 yourself to Zander!” Zander is a straight, white male. Doe told James he did not know
14 if he could continue working at Ogletree under these circumstances. James became even
15 more angry and told Doe that no one else would hire him and that he not dare try to
16 leave. Based on James’ body language and facial expressions, Doe felt physically
17 threatened.

18 14. After James apparently cooled down, James later told Doe that Johnson would
19 not be the managing partner in the Los Angeles office much longer and that James was
20 in line possibly to take over her position. He said that, if he were to become the
21 managing partner, Doe had “nothing to worry about” because he would “Take care of
22 [Doe].” Doe took that to mean that James was making further suggestions and
23 propositions to him.

24 15. At or around this time, Ogletree’s Los Angeles office had no fewer than three
25 attorneys who had taken or were currently on leaves related to stress. In a discussion of
26 these attorneys with Doe, James referred to one of these attorneys as “crazy” and said he
27 would not work with the other attorney because that attorney had taken a leave.

28 16. Toward the end of June, 2017, James assigned Doe to work with him full-time

1 on three new cases. He took advantage of his position of power over Doe and began to
2 call him into his office on a daily basis and send him messages late into the night,
3 purportedly about “work.” This made Doe increasingly concerned that James was going
4 to take advantage of him, attempt to control every aspect of his life, and harass him even
5 more. Doe continued to fear retaliation for complaining about James’s sexual
6 harassment, as Ogletree had already confirmed that it endorses harassment of and
7 retaliation against its employees.

8 17. Ogletree’s handling of James’s harassing conduct is consistent with its practice
9 and policy of allowing partners to harass other attorneys and its failure to investigate and
10 handle such situations properly. For example, at least two female associates in
11 Ogletree’s San Diego office complained about sexual harassment by a male partner there
12 in the last two years. The firm then engaged in a purported “investigation” conducted by
13 an Ogletree partner that found the harasser had done no wrong-doing before any
14 investigation actually took place. And rather than take any corrective action whatsoever
15 against the harassing partner, however, Ogletree did not discipline him, but instead
16 opened a second San Diego office to separate the harassing partner from female
17 associates (and those attorneys who stood up for the harassed associates). Multiple
18 Ogletree attorneys have complained to management about the handling of complaints
19 within the firm and the lack of proper investigation of such complaints, to no avail.
20 Many attorneys have the left the firm precisely because of this reason.

21 18. *Defendants’ constructive termination of plaintiff’s employment:*

22 a. On July 17, 2017, not able to stand another day of working for James and
23 Ogletree, Doe e-mailed Ogletree’s director of human resources, Kay Straky. In his
24 email, he told her that he felt compelled to leave because of ongoing sexual harassment
25 by a partner, as well as discrimination by the firm, and that his prior complaints about
26 these issues had gone nowhere. Within an hour of his e-mail to Straky, James contacted
27 Doe about leaving the firm, even though Doe had not communicated the news to James.

28 b. That same day, Straky called Doe to discuss his compelled termination.

1 During that discussion, he informed her that he was concerned about his safety and wor-
2 ried that James was going to confront him about leaving the firm. Straky responded that
3 he should feel free to work from home through his last day, July 28, 2017. She further
4 apologized to Doe on behalf of Ogletree and described James’s conduct as “appalling.”

5 c. The next day, July 18, 2017, Straky called Doe to inform him that Johnson
6 required that he work at the office and that he could not work from home, despite Doe’s
7 expressed safety concerns surrounding James. Doe complained to Straky, again, about
8 this ongoing harassment by Ogletree.

9 d. Also on July 18, 2017, Straky informed Doe that Ogletree planned to conduct
10 a purported investigation of his claims, but told Doe that the investigation would be
11 conducted by another Ogletree partner. Doe objected to such a biased investigation be-
12 cause a partner of his harasser could not conduct an impartial investigation. He also told
13 Straky that the investigating partner had an incentive to protect James, regardless of the
14 facts of the situation. Straky ignored his concerns and told Doe that Ogletree refused to
15 hire a third-party investigator.

16 e. On July 28, 2017, the last day of his employment at Ogletree, Doe met with
17 office administrator Christy Barrett to return his company property and sign final paper
18 work. Barrett asked him to sign an EDD form stating that he quit voluntarily, but Doe
19 refused to sign the form because defendants had forced him to quit.

20 f. Ogletree never completed an impartial or complete investigation into Doe’s
21 complaints. Ogletree never took any disciplinary action against James. In fact, after
22 Doe’s complaints, Ogletree only further embraced and promoted James. In early 2018,
23 Ogletree increased James’ responsibility at the firm by making him the firm Ambassador
24 for its Professional Development & Inclusion Department in which his role is to
25 “support national professional development initiatives and identify local developmental
26 needs and resources.”

27 19. *Economic damages:* As a consequence of defendants’ conduct, plaintiff has
28 suffered and will suffer harm, including lost past and future income and employment

1 benefits, damage to his career, and lost wages, overtime, unpaid expenses, and penalties,
2 as well as interest on unpaid wages at the legal rate from and after each payday on which
3 those wages should have been paid, in a sum to be proven at trial.

4 20. *Non-economic damages:* As a consequence of defendants' conduct, plaintiff
5 has suffered and will suffer psychological and emotional distress, humiliation, and men-
6 tal and physical pain and anguish, in a sum to be proven at trial.

7 21. *Punitive damages:* Defendants' conduct constitutes oppression, fraud, and/or
8 malice under California Civil Code section 3294 and, thus, entitles plaintiff to an award
9 of exemplary and/or punitive damages.

10 a. *Malice:* Defendants' conduct was committed with malice within the meaning
11 of California Civil Code section 3294, including that (a) defendants acted with intent to
12 cause injury to plaintiff and/or acted with reckless disregard for plaintiff's injury, in-
13 cluding by terminating plaintiff's employment and/or taking other adverse job actions
14 against plaintiff because of his race, national origin, color, sexual orientation, marital
15 status, and/or good faith complaints, and/or (b) defendants' conduct was despicable and
16 committed in willful and conscious disregard of plaintiff's rights, health, and safety, in-
17 cluding plaintiff's right to be free of discrimination, harassment, retaliation, and wrong-
18 ful employment termination.

19 b. *Oppression:* In addition, and/or alternatively, defendants' conduct was
20 committed with oppression within the meaning of California Civil Code section 3294,
21 including that defendants' actions against plaintiff because of his race, national origin,
22 color, sexual orientation, marital status, and/or good faith complaints were "despicable"
23 and subjected plaintiff to cruel and unjust hardship, in knowing disregard of plaintiff's
24 rights to a work place free of discrimination, harassment, retaliation, and wrongful em-
25 ployment termination.

26 c. *Fraud:* In addition, and/or alternatively, defendants' conduct, as alleged, was
27 fraudulent within the meaning of California Civil Code section 3294, including that
28 defendants asserted false (pretextual) grounds for terminating plaintiff's employment

1 and/or other adverse job actions, thereby to cause plaintiff hardship and deprive him of
2 legal rights.

3 22. *Attorneys' fees:* Plaintiff has incurred and continues to incur legal expenses and
4 attorneys' fees.

5 23. *Exhaustion of administrative remedies:* Prior to filing this action, plaintiff ex-
6 hausted his administrative remedies by filing a timely administrative complaint with the
7 Department of Fair Employment and Housing ("DFEH") and receiving a DFEH right-to-
8 sue letter.

9
10 **FIRST CAUSE OF ACTION**

11 **(Sexual Harassment (Government Code**

12 **§ 12955(a), (d))—Against All Defendants, and**

13 **Does 1 to 100, Inclusive)**

14 24. The allegations set forth in paragraphs 1 through 23 are re-alleged and incorpo-
15 rated herein by reference.

16 25. At all times herein mentioned, FEHA, Government Code section 12955(a) and
17 (d), was in full force and effect and was binding on defendants. This statute requires
18 defendants to refrain from sexually harassing their employees. Within the time provided
19 by law, plaintiff filed a complaint with the DFEH, in full compliance with administrative
20 requirements, and received a right-to-sue letter.

21 26. As identified herein, during plaintiff's employment with defendants, defendants
22 engaged in actions that constituted sexual harassment of plaintiff. These actions created a
23 hostile working environment for plaintiff.

24 27. All of these actions were taken against plaintiff's will and desire and over his
25 protests. These acts of misconduct occurred from at least May 12, 2015, until July 28,
26 2017, when plaintiff's employment with defendants was constructively terminated. De-
27 fendants took no action to prevent the sexual harassment of plaintiff.

28 28. As a proximate result of defendants' willful, knowing, and intentional sexual

1 harassment of plaintiff, plaintiff has sustained and continues to sustain damages, includ-
2 ing losses of earnings and benefits, according to proof.

3 29. As a proximate result of defendants' willful, knowing, and intentional sexual
4 harassment of plaintiff, plaintiff has suffered and continues to suffer humiliation, emo-
5 tional distress, and mental and physical pain and anguish, all to his damage in a sum ac-
6 cording to proof.

7 30. Defendants' sexual harassment was done intentionally, in a malicious, oppres-
8 sive, fraudulent manner, entitling plaintiff to punitive damages.

9 31. Plaintiff has incurred and continues to incur legal expenses and attorneys' fees.
10 Plaintiff is at present unaware of the precise amounts of these expenses and fees and will
11 seek leave of court to amend this Complaint when the amounts are known.

12
13 **SECOND CAUSE OF ACTION**
14 **(Violation of FEHA (Government Code § 12940(j) (Quid**
15 **pro Quo Sexual Harassment)—Against All Defendants**
16 **and Does 1 to 100, Inclusive)**

17 32. The allegations set forth in paragraphs 1 through 31 are re-alleged and incorpo-
18 rated herein by reference.

19 33. At all times herein mentioned, FEHA, Government Code section 12940(j), was
20 in full force and effect and was binding on defendants. This statute requires defendants
21 to refrain from sexually harassing any employee on the basis of sex or gender. Within
22 the time provided by law, plaintiff filed a complaint with the DFEH, in full compliance
23 with administrative requirements, and received a right-to-sue letter.

24 34. During plaintiff's employment, defendants' agents and supervisors subjected
25 plaintiff to unwelcome sexual advances, requests for sexual favors or other verbal, visual,
26 or physical conduct of a sexual nature. Submission to this conduct was made explicitly and
27 implicitly a term or condition of plaintiff's employment or provision of services. Plaintiff's
28 submission to or rejection of the conduct was used as the basis for employment decisions

1 affecting plaintiff. All of these actions were taken against plaintiff's will and desire and
2 over his protests. Defendants' agents and supervisors knew or should have known of the
3 harassing conduct and failed to take immediate and appropriate corrective action.

4 35. As a proximate result of defendants' willful, knowing, and intentional sexual
5 harassment, plaintiff has sustained and continues to sustain substantial losses of earnings
6 and other employment benefits.

7 36. As a proximate result of defendants' willful, knowing, and intentional sexual
8 harassment, plaintiff has suffered and continues to suffer humiliation, emotional distress,
9 and mental and physical pain and anguish, all to his damage in a sum according to proof.

10 37. Defendants' sexual harassment was committed intentionally, in a malicious,
11 oppressive, fraudulent manner, entitling plaintiff to punitive damages.

12 38. Plaintiff has incurred and continues to incur legal expenses and attorneys' fees.
13 Pursuant to Government Code section 12965(b), plaintiff is entitled to recover reason-
14 able attorneys' fees and costs (including expert costs) in an amount according to proof.

15
16 **THIRD CAUSE OF ACTION**

17 **(Violation of FEHA (Government § 12900, *et seq.*)**

18 **(Race Discrimination)—Against Defendants Ogletree**

19 **and Does 1 to 100, Inclusive)**

20 39. The allegations set forth in paragraphs 1 through 38 are re-alleged and incorpo-
21 rated herein by reference.

22 40. Defendants' conduct, as alleged, violated FEHA, Government Code section
23 12900, *et seq.*, and defendants committed unlawful employment practices, including by
24 the following bases for liability:

25 a. Discharging, barring, refusing to transfer, retain, hire, select, and/or employ,
26 and/or otherwise discriminating against plaintiff, in whole or in part on the basis of plain-
27 tiff's race, national origin, and/or color, in violation of Government Code section 12940(a);

28 b. Harassing plaintiff and/or creating a hostile work environment, in whole or in

1 part on the basis of plaintiff's race, national origin, and/or color, in violation of
2 Government Code section 12940(j);

3 c. Failing to take all reasonable steps to prevent discrimination and harassment
4 based on race, in violation of Government Code section 12940(k);

5 d. Retaliating against plaintiff for seeking to exercise rights guaranteed under
6 FEHA and/or opposing defendants' failure to provide such rights, in violation of Gov-
7 ernment Code section 12940(h).

8 41. As a proximate result of defendants' willful, knowing, and intentional discrimi-
9 nation against plaintiff, plaintiff has sustained and continues to sustain substantial losses
10 of earnings and other employment benefits.

11 42. As a proximate result of defendants' willful, knowing, and intentional discrimi-
12 nation against plaintiff, plaintiff has suffered and continues to suffer humiliation, emo-
13 tional distress, and physical and mental pain and anguish, all to his damage in a sum
14 according to proof.

15 43. Plaintiff has incurred and continues to incur legal expenses and attorneys' fees.
16 Pursuant to Government Code section 12965(b), plaintiff is entitled to recover reason-
17 able attorneys' fees and costs (including expert costs) in an amount according to proof.

18 44. Defendants' misconduct was committed intentionally, in a malicious, despicable,
19 oppressive, fraudulent manner, entitling plaintiff to punitive damages against defendants.
20

21 **FOURTH CAUSE OF ACTION**
22 **(Violation of FEHA (Government § 12900,**
23 ***et seq.*) (Race Harassment)—Against All**
24 **Defendants and Does 1 to 100, Inclusive)**

25 45. The allegations set forth in paragraphs 1 through 44 are re-alleged and incorpo-
26 rated herein by reference.

27 46. Defendants' conduct, as alleged, violated FEHA, Government Code section
28 12900, *et seq.*, and defendants committed unlawful employment practices, including by

1 the following bases for liability:

2 a. Harassing plaintiff and/or creating a hostile work environment, in whole or in
3 part on the basis of plaintiff's race, national origin, and/or color, in violation of
4 Government Code section 12940(j);

5 b. Failing to take all reasonable steps to prevent discrimination, harassment, and
6 retaliation based on race, national origin, and/or color, in violation of Government Code
7 section 12940(k).

8 47. As a proximate result of defendants' willful, knowing, and intentional harass-
9 ment of plaintiff, plaintiff has sustained and continues to sustain substantial losses of
10 earnings and other employment benefits.

11 48. As a proximate result of defendants' willful, knowing, and intentional harass-
12 ment of plaintiff, plaintiff has suffered and continues to suffer humiliation, emotional
13 distress, and physical and mental pain and anguish, all to his damage in a sum according
14 to proof.

15 49. Plaintiff has incurred and continues to incur legal expenses and attorneys' fees.
16 Pursuant to Government Code section 12965(b), plaintiff is entitled to recover reason-
17 able attorneys' fees and costs (including expert costs) in an amount according to proof.

18 50. Defendants' misconduct was committed intentionally, in a malicious, despicable,
19 oppressive, fraudulent manner, entitling plaintiff to punitive damages against defendants.
20

21 **FIFTH CAUSE OF ACTION**

22 **(Violation of FEHA (Government Code § 12900, *et seq.*)**

23 **(Sexual Orientation Discrimination)—Against Defendants**

24 **Ogletree and Does 1 to 100, Inclusive)**

25 51. The allegations set forth in paragraphs 1 through 50 are re-alleged and incorpo-
26 rated herein by reference.

27 52. Plaintiff's sexual orientation and/or other characteristics protected by FEHA,
28 Government Code section 12900, *et seq.*, were motivating factors in defendants' deci-

1 sion not to retain, hire, or otherwise employ plaintiff in any position and/or to take other
2 adverse employment action, including employment termination, against plaintiff.

3 53. Defendants' conduct, as alleged, violated FEHA, Government Code section
4 12900, *et seq.*, and defendants committed unlawful employment practices, including by
5 the following separate bases for liability:

6 a. Barring, discharging, refusing to transfer, retain, hire, select, and/or employ,
7 and/or otherwise discriminating against plaintiff, in whole or in part on the basis of
8 plaintiff's actual and/or perceived sexual orientation and/or other protected characteris-
9 tics, in violation of Government Code section 12940(a);

10 b. Failing to take all reasonable steps to prevent discrimination, harassment, and
11 retaliation on the basis of actual and/or perceived sexual orientation, in violation of
12 Government Code section 12940(k);

13 c. Retaliating against plaintiff for seeking to exercise rights guaranteed under
14 FEHA and/or opposing defendants' failure to recognize such rights, including the right
15 to be free of discrimination, in violation of Government Code section 12940(h).

16 54. As a proximate result of defendants' willful, knowing, and intentional discrimi-
17 nation against plaintiff, plaintiff has sustained and continues to sustain substantial losses
18 of earnings and other employment benefits.

19 55. As a proximate result of defendants' willful, knowing, and intentional discrimi-
20 nation against plaintiff, plaintiff has suffered and continues to suffer humiliation, emo-
21 tional distress, and physical and mental pain and anguish, all to his damage in a sum
22 according to proof.

23 56. Defendants' misconduct was committed intentionally, in a malicious, despicable,
24 oppressive, fraudulent manner, entitling plaintiff to punitive damages against defendants.

25 57. Plaintiff has incurred and continues to incur legal expenses and attorneys' fees.
26 Pursuant to Government Code section 12965(b), plaintiff is entitled to recover reason-
27 able attorneys' fees and costs (including expert costs) in an amount according to proof.
28

1 **SIXTH CAUSE OF ACTION**
2 **(Violation of FEHA (Government Code § 12900, *et seq.*)**
3 **(Marital Status Discrimination)—Against Defendants**
4 **Ogletree and Does 1 to 100, Inclusive)**

5 58. The allegations set forth in paragraphs 1 through 57 are re-alleged and incorpo-
6 rated herein by reference.

7 59. Plaintiff's marital status and/or other characteristics protected by FEHA,
8 Government Code section 12900, *et seq.*, were motivating factors in defendants' deci-
9 sion not to retain, hire, or otherwise employ plaintiff in any position and/or to take other
10 adverse employment action, including employment termination, against plaintiff.

11 60. Defendants' conduct, as alleged, violated FEHA, Government Code section
12 12900, *et seq.*, and defendants committed unlawful employment practices, including by
13 the following separate bases for liability:

14 a. Barring, discharging, refusing to transfer, retain, hire, select, and/or employ,
15 and/or otherwise discriminating against plaintiff, in whole or in part on the basis of
16 plaintiff's actual and/or perceived marital status and/or other protected characteristics, in
17 violation of Government Code section 12940(a);

18 b. Failing to take all reasonable steps to prevent discrimination, harassment, and
19 retaliation on the basis of actual and/or perceived marital status, in violation of
20 Government Code section 12940(k);

21 c. Retaliating against plaintiff for seeking to exercise rights guaranteed under
22 FEHA and/or opposing defendants' failure to recognize such rights, including the right
23 to be free of discrimination, in violation of Government Code section 12940(h).

24 61. As a proximate result of defendants' willful, knowing, and intentional discrimi-
25 nation against plaintiff, plaintiff has sustained and continues to sustain substantial losses
26 of earnings and other employment benefits.

27 62. As a proximate result of defendants' willful, knowing, and intentional discrimi-
28 nation against plaintiff, plaintiff has suffered and continues to suffer humiliation, emo-

1 tional distress, and physical and mental pain and anguish, all to his damage in a sum
2 according to proof.

3 63. Defendants' misconduct was committed intentionally, in a malicious, despicable,
4 oppressive, fraudulent manner, entitling plaintiff to punitive damages against defendants.

5 64. Plaintiff has incurred and continues to incur legal expenses and attorneys' fees.
6 Pursuant to Government Code section 12965(b), plaintiff is entitled to recover reason-
7 able attorneys' fees and costs (including expert costs) in an amount according to proof.
8

9 **SEVENTH CAUSE OF ACTION**
10 **(Violation of Equal Pay Act (Labor Code**
11 **§ 1197.5(a))—Against Defendants Ogletree**
12 **and Does 1 to 100, Inclusive)**

13 65. The allegations set forth in paragraphs 1 through 64 are re-alleged and incorpo-
14 rated herein by reference.

15 66. At all relevant times, Labor Code section 1197.5 was in effect and was binding
16 on defendants. This statute prohibits defendants from paying any individual at a lower
17 rate than employees of a different race or sexual orientation in the same establishment
18 for equal work requiring equal skill, effort, and responsibility and performed under simi-
19 lar working conditions.

20 67. Defendants violated these laws by failing to pay plaintiff at the same rate as his
21 white, heterosexual counterparts. Plaintiff, who was a tenth-year associate, was being
22 paid less than eighth-year associates for the same work, which required equal skill, ef-
23 fort, and responsibility, under similar working conditions. Defendants were informed of
24 their failure, yet continued to fail to pay plaintiff equal wages, which are due and owing.

25 68. During plaintiff's employment, he raised concerns that his salary was lower
26 than those of his less experienced white, straight, male colleagues. Although defendants
27 promised to increase his pay, defendant Johnson later rescinded that promise, and plain-
28 tiff continued to receive less than his straight, white counterparts until the constructive

1 termination of his employment, despite his complaints. As such, the doctrines of equita-
2 ble tolling and continuing violations apply to plaintiff's claims of unequal pay. *Richards*
3 *v. CH2M Hill, Inc.* (2001) 26 Cal.4th 798 (an employee is not required to file a lawsuit
4 the moment conditions become intolerable for the employee); *McDonald v. Antelope*
5 *Valley Community College Dist.* (2008) 45 Cal.4th 88.

6 69. As a proximate result of defendants' willful, knowing, and intentional viola-
7 tions of Labor Code section 1197.5, plaintiff has sustained and continues to sustain
8 substantial losses of earnings and wages and other employment benefits.

9 70. Plaintiff has incurred and continues to incur legal expenses and attorneys' fees.
10 Pursuant to Labor Code section 1197.5(g), plaintiff is entitled to recover reasonable
11 attorneys' fees and costs in an amount according to proof.

12
13 **EIGHTH CAUSE OF ACTION**

14 **(Violation of FEHA (Government Code § 12940(k) (Failure**
15 **to Prevent Discrimination, Harassment, and Retaliation)—**
16 **Against Defendants Ogletree and Does 1 to 100, Inclusive)**

17 71. The allegations set forth in paragraphs 1 through 70 are re-alleged and incorpo-
18 rated herein by reference.

19 72. At all times herein mentioned, FEHA, Government Code section 12940(k), was
20 in full force and effect and was binding on defendants. This statute states that it is an
21 unlawful employment practice in California for an employer "to fail to take all rea-
22 sonable steps necessary to prevent discrimination and harassment from occurring." Prior
23 to filing the instant Complaint, plaintiff filed a timely administrative charge with the
24 DFEH and received a right-to-sue letter.

25 73. During the course of plaintiff's employment, defendants failed to prevent their
26 employees from engaging in intentional actions that resulted in plaintiff's being treated
27 less favorably because of plaintiff's protected status (*i.e.*, his race, national origin, color,
28 sexual orientation, and/or marital status). During the course of plaintiff's employment,

1 defendants failed to prevent their employees from engaging in unjustified employment
2 practices against employees in such protected classes. During the course of plaintiff's
3 employment, defendants failed to prevent a pattern and practice by their employees of
4 intentional discrimination and harassment on the bases of race, national origin, color,
5 sexual orientation, marital status, and/or other protected statuses or protected activities.

6 74. Plaintiff believes and on that basis alleges that his race, national origin, color,
7 sexual orientation, marital status, and/or other protected status and/or protected activity
8 were substantial motivating factors in defendants' employees' discrimination against and
9 harassment of him.

10 75. As a proximate result of defendants' willful, knowing, and intentional miscon-
11 duct, plaintiff has sustained and continues to sustain substantial losses of earnings and
12 other employment benefits.

13 76. As a proximate result of defendants' willful, knowing, and intentional miscon-
14 duct, plaintiff has suffered and continues to suffer humiliation, emotional distress, and
15 physical and mental pain and anguish, all to his damage in a sum according to proof.

16 77. Plaintiff has incurred and continues to incur legal expenses and attorneys' fees.
17 Pursuant to Government Code section 12965(b), plaintiff is entitled to recover reason-
18 able attorneys' fees and costs (including expert costs) in an amount according to proof.

19 78. Defendants' misconduct was committed intentionally, in a malicious, despicable,
20 oppressive, fraudulent manner, entitling plaintiff to punitive damages against defendants.

21
22 **NINTH CAUSE OF ACTION**

23 **(Wrongful Constructive Termination of Employment in**
24 **Violation of Public Policy (Labor Code § 1102.5; FEHA,**
25 **Government Code § 12900, *et seq.*)—Against Defendants**
26 **Ogletree and Does 1 to 100, Inclusive)**

27 79. The allegations set forth in paragraphs 1 through 78 are re-alleged and incorpo-
28 rated herein by reference.

1 80. Defendants terminated plaintiff's employment in violation of various funda-
2 mental public policies underlying both state and federal laws. Specifically, plaintiff's
3 employment was terminated in part because of his protected status (*i.e.*, race, national
4 origin, color, sexual orientation, marital status, and/or good faith complaints). These
5 actions were in violation of FEHA, the California Constitution, and California Labor
6 Code section 1102.5.

7 81. As a proximate result of defendants' wrongful termination of plaintiff's em-
8 ployment in violation of fundamental public policies, plaintiff has suffered and continues
9 to suffer humiliation, emotional distress, and mental and physical pain and anguish, all to
10 his damage in a sum according to proof.

11 82. As a result of defendants' wrongful termination of his employment, plaintiff has
12 suffered general and special damages in sums according to proof.

13 83. Defendants' wrongful termination of plaintiff's employment was done inten-
14 tionally, in a malicious, fraudulent, oppressive, fraudulent manner, entitling plaintiff to
15 punitive damages.

16 84. Plaintiff has incurred and continues to incur legal expenses and attorneys' fees.
17 Pursuant to Code of Civil Procedure sections 1021.5 and 1032, *et seq.*, plaintiff is enti-
18 tled to recover reasonable attorneys' fees and costs in an amount according to proof.

19
20 **TENTH CAUSE OF ACTION**

21 **(Violations of Labor Code § 1102.5, *et seq.*—Against**
22 **Defendants Ogletree and Does 1 to 100, Inclusive)**

23 85. The allegations set forth in paragraphs 1 through 84 are re-alleged and incorpo-
24 rated herein by reference.

25 86. At all relevant times, Labor Code section 1102.5 was in effect and was binding
26 on defendants. This statute prohibits defendants from retaliating against any employee,
27 including plaintiff, for raising complaints of illegality.

28 87. Plaintiff raised complaints of illegality while he worked for defendants, and

1 defendants retaliated against him by discriminating against him, harassing him, and
2 taking adverse employment actions, including employment termination, against him.

3 88. As a proximate result of defendants' willful, knowing, and intentional viola-
4 tions of Labor Code section 1102.5, plaintiff has suffered and continues to suffer humili-
5 ation, emotional distress, and mental and physical pain and anguish, all to his damage in
6 a sum according to proof.

7 89. As a result of defendants' adverse employment actions against plaintiff, plain-
8 tiff has suffered general and special damages in sums according to proof.

9 90. Defendants' misconduct was committed intentionally, in a malicious, oppres-
10 sive, fraudulent manner, entitling plaintiff to punitive damages against defendants.

11
12 **ELEVENTH CAUSE OF ACTION**

13 **(Intentional Infliction of Emotional Distress—Against**
14 **All Defendants and Does 1 to 100, Inclusive)**

15 91. The allegations set forth in paragraphs 1 through 90 are re-alleged and incorpo-
16 rated herein by reference.

17 92. Defendants' discriminatory, harassing, and retaliatory actions against plaintiff
18 constituted severe and outrageous misconduct and caused plaintiff extreme emotional
19 distress.

20 93. Defendants were aware that treating plaintiff in the manner alleged above,
21 including depriving plaintiff of his livelihood, would devastate plaintiff and cause him
22 extreme hardship.

23 94. As a proximate result of defendants' extreme and outrageous conduct, plaintiff
24 has suffered and continues to suffer severe emotional distress. Plaintiff has sustained
25 and continues to sustain substantial losses of earnings and other employment benefits as
26 a result of being emotionally distressed.

27 95. As a proximate result of defendants' extreme and outrageous conduct, plaintiff
28 has suffered and continues to suffer humiliation, emotional distress, and mental and

1 physical pain and anguish, all to his damage in a sum according to proof.

2 96. Defendants' misconduct was committed intentionally, in a malicious, oppres-
3 sive, fraudulent manner, entitling plaintiff to punitive damages.

4
5 **TWELFTH CAUSE OF ACTION**

6 **(Violation of FEHA (Government Code § 12900, *et seq.*)**

7 **(Retaliation for Engaging in Protected Activity)—Against**

8 **Defendants Ogletree and Does 1 to 100, Inclusive)**

9 97. The allegations set forth in paragraphs 1 through 96 are re-alleged and incorpo-
10 rated herein by reference.

11 2. Plaintiff's complaints to defendants about sexual harassment, as well as actual
12 and/or perceived sexual orientation, marital status, race, and/or other characteristics pro-
13 tected by FEHA, Government Code section 12900, *et seq.*, were motivating factors in
14 defendants' decision not to retain, hire, or otherwise employ plaintiff in any position
15 and/or to take other adverse employment action, including constructive employment ter-
16 mination, against plaintiff.

17 3. Defendants' agents and supervisors frequently made extremely inappropriate,
18 sexually explicit comments in front of plaintiff.

19 4. Plaintiff complained to defendants about the inappropriate comments, but noth-
20 ing was done. On the basis of the above, plaintiff believes and alleges that defendants
21 retaliated against him for his complaints of sexual harassment.

22 5. Plaintiff complained to defendants of the sexual harassment he experienced.
23 Thereafter, defendants retaliated against plaintiff by harassing him and taking adverse
24 employment actions against him, in major part because he reported the sexual harass-
25 ment.

26 6. Plaintiff's actual and/or perceived sexual orientation, marital status, race, and/or
27 other characteristics protected by FEHA, Government Code section 12900, *et seq.*, were
28 motivating factors in defendants' decision not to retain, hire, or otherwise employ plain-

1 tiff in any position and/or to take other adverse employment action, including construc-
2 tive employment termination, against plaintiff.

3 7. Defendants' conduct, as alleged, violated FEHA, Government Code section
4 12900, *et seq.*, and defendants committed unlawful employment practices, including by
5 the following, separate bases for liability:

6 a. Barring, discharging, refusing to transfer, retain, hire, select, and/or employ,
7 and/or otherwise discriminating against plaintiff, in whole or in part on the basis of
8 plaintiff's actual and/or perceived sexual orientation, marital status, race, and/or other
9 protected characteristics, in violation of Government Code section 12940(a);

10 b. Retaliating against plaintiff for his complaints to defendants about the sexu-
11 al harassment he was experiencing by taking adverse employment actions against him,
12 in violation of Government Code section 12940(f);

13 c. Harassing plaintiff and/or creating a hostile work environment, in whole or
14 in part on the basis of plaintiff's actual and/or perceived sexual orientation, marital
15 status, race, and/or other protected characteristics, in violation of Government Code
16 section 12940(j);

17 d. Failing to take all reasonable steps to prevent discrimination, harassment,
18 and retaliation on the basis of actual and/or perceived sexual orientation, marital status,
19 and race, in violation of Government Code section 12940(k);

20 e. Retaliating against plaintiff for seeking to exercise rights guaranteed under
21 FEHA and/or opposing defendant's failure to recognize such rights, including the right
22 to be free of discrimination, in violation of Government Code section 12940(h).

23 8. As a proximate result of defendants' willful, knowing, and intentional discrimi-
24 nation against plaintiff, plaintiff has sustained and continues to sustain substantial losses
25 of earnings and other employment benefits.

26 9. As a proximate result of defendants' willful, knowing, and intentional discrimi-
27 nation against plaintiff, plaintiff has suffered and continues to suffer humiliation, emo-
28 tional distress, and physical and mental pain and anguish, all to his damage in a sum

1 according to proof.

2 10. Defendants' misconduct was committed intentionally, in a malicious, despicable,
3 oppressive, fraudulent manner, entitling plaintiff to punitive damages against defendants.

4 11. Plaintiff has incurred and continues to incur legal expenses and attorneys' fees.
5 Pursuant to Government Code section 12965(b), plaintiff is entitled to recover reason-
6 able attorneys' fees and costs (including expert costs) in an amount according to proof.

7
8 **PRAYER**

9 WHEREFORE, plaintiff, John Doe, prays for judgment against defendants as fol-
10 lows:

- 11 a. For general and special damages according to proof;
12 b. For exemplary damages, according to proof;
13 c. For pre-judgment and post-judgment interest on all damages awarded;
14 d. For reasonable attorneys' fees;
15 e. For costs of suit incurred;
16 f. For declaratory relief;
17 g. For such other and further relief as the Court may deem just and proper.

18
19 ADDITIONALLY, plaintiff, John Doe, demands trial of this matter by jury. The
20 amount demanded exceeds \$25,000.00 (Government Code § 72055).

21
22 Dated: February 21, 2018

SHEGERIAN & ASSOCIATES, INC.

23
24 By: 
25 Carney R. Shegerian, Esq.

26 Attorneys for Plaintiff,
27 JOHN DOE
28