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5 Attorneys for Defendants
6 APPLE INC. and RHONDA HESS-BEAVERS
7 (sued erroneously herein as "RHONDA HESS-
BREWER")

8 UNITED STATES DISTRICT COURT
9 EASTERN DISTRICT OF CALIFORNIA

10 DWAYNE RICHARDSON, an individual,

11 Plaintiff,

12 v.

13 APPLE INC., a California corporation;
14 RHONDA HESS-BREWER, an individual;
and DOES 1 through 20, inclusive,

15 Defendants.

Case No. _____

**NOTICE OF REMOVAL OF CIVIL
ACTION TO FEDERAL COURT FROM
STATE COURT BY DEFENDANTS**

COMPLAINT FILED: June 13, 2012
TRIAL DATE: No date set.

(Sacramento County Superior Court
Case No. 34-2012-00125838)

18
19 **TO THE CLERK OF THE UNITED STATES DISTRICT COURT, EASTERN DISTRICT**
20 **OF CALIFORNIA:**

21 PLEASE TAKE NOTICE that Defendants APPLE INC. ("Apple") and RHONDA
22 HESS-BEAVERS (erroneously sued herein as "RHONDA HESS-BREWER") ("Hess-Beavers"),
23 hereinafter collectively referred to as "Defendants," hereby remove this action from the Superior
24 Court of the State of California, County of Sacramento, to the United States District Court for the
25 Eastern District of California, pursuant to 28 U.S.C. §§ 1441(a) and 1446. Removal is based on the
26 original jurisdiction of the district court pursuant to 28 U.S.C. §§ 1331 and 1337(a) and § 2000e-5(f)
27 of Title VII of the Civil Rights Act of 1964 ("Title VII"), codified at 42 U.S.C. § 2000e *et seq.*, on
28 the following grounds:

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I.
STATEMENT OF JURISDICTION

1. Removal jurisdiction exists because this Court has original jurisdiction over “all civil actions arising under the Constitution, laws, or treaties of the United States” (28 U.S.C. § 1331), as well as civil actions “arising under any Act of Congress regulating commerce.” 28 U.S.C. § 1337(a). Removal jurisdiction further is proper in this Court because an action alleging unlawful employment practices in violation of Title VII, such as this one, may be maintained in federal district court. 42 U.S.C. § 2000e-5(f)(3) (“Each United States district court ... shall have jurisdiction of actions brought under this subchapter”).

II.
VENUE

2. Venue is proper in the United States District Court for the Eastern District of California because Plaintiff DWAYNE RICHARDSON (“Plaintiff”) filed his Complaint in the Superior Court of the State of California, County of Sacramento. 28 U.S.C. § 1446(a); see also 28 U.S.C. §§ 84(b), 1391(b)(2); 42 U.S.C. § 2000e-5(f)(3); E.D. Cal. R. 120(d).

III.
PLEADINGS AND PROCESS

3. On June 13, 2012, Plaintiff filed an unverified Complaint in Sacramento County Superior Court, entitled *Dwayne Richardson v. Apple Inc., a California corporation; Rhonda Hess-Brewer [sic], an individual; and Does 1 through 20, inclusive*, and designated as Case No. 34-2012-00125838.

4. On July 3, 2012, Plaintiff served a copy of the Summons and Complaint on Apple. True and correct copies of the Summons and Complaint served on Apple on July 3, 2012, are attached hereto as **Exhibit A**. The Summons and Complaint attached hereto as **Exhibit A** constitute all the pleadings, process, and orders served on Apple by Plaintiff. *See* 28 U.S.C. § 1446(a).

5. Plaintiff’s Complaint alleges claims for wrongful termination and retaliation, including a claim of retaliation under Title VII, against Apple. Plaintiff’s Complaint alleges a claim

1 for intentional infliction of emotional distress against Hess-Beavers. *See* Complaint, ¶¶ 25-48.

2 6. Plaintiff admits in his Complaint that federal jurisdiction exists in this action
3 based on “federal question jurisdiction.” Complaint, ¶ 1.

4 7. On August 1, 2012, Apple filed its Answer to Plaintiff’s Complaint in
5 Sacramento County Superior Court. A true and correct copy of Apple’s Answer to Plaintiff’s
6 Complaint is attached hereto as **Exhibit B**.

7 8. Also on August 1, 2012, Hess-Beavers filed her Answer to Plaintiff’s
8 Complaint in Sacramento County Superior Court. A true and correct copy of Hess-Beavers’ Answer
9 to Plaintiff’s Complaint is attached hereto as **Exhibit C**.

10 9. Although Plaintiff failed to serve Hess-Beavers with a copy of the Summons
11 and Complaint, Defendant Hess-Beavers’ Answer constitutes a general appearance in the action.
12 Cal. Code Civ. Proc. § 410.50(a); *Fireman’s Fund Ins. Co. v. Sparks Construction, Inc.*, 114 Cal.
13 App. 4th 1135, 1145, 1147 (2004).

14 **IV.**
15 **TIMELINESS OF REMOVAL**

16 10. This Notice of Removal is timely filed within 30 days of the date Apple was
17 served with the Summons and Complaint and within 30 days of the date Hess-Beavers filed her
18 Answer to Plaintiff’s Complaint. 28 U.S.C. § 1446(b); *Murphy Bros., Inc. v. Michetti Pipe*
19 *Stringing, Inc.*, 526 U.S. 344, 354 (1999).

20 **V.**
21 **JOINDER OF ALL DEFENDANTS IN REMOVAL**

22 11. Although Plaintiff’s claim of retaliation in violation of Title VII is alleged
23 only as against Apple, Hess-Beavers consents to, and joins in, the removal of this civil action from
24 state court to federal court on the basis of federal question jurisdiction. *See* 28 U.S.C.
25 § 1446(b)(2)(A); *Proctor v. Vishay Intertechnology Inc.*, 584 F.3d 1208, 1224-1225 (2009).

26 **VI.**
27 **BASIS FOR REMOVAL**

28 12. Original, federal question jurisdiction exists in this Court pursuant to

1 28 U.S.C. §§ 1331 and 1337(a), as well as 42 U.S.C. § 2000e-5(f), because Plaintiff's Complaint
2 alleges a claim of retaliation under Title VII in violation of 42 U.S.C. § 2000e-3(a). *See* Complaint,
3 ¶¶ 25-30; *cf. Caterpillar Inc. v. Williams*, 482 U.S. 386, 392 (1987) (federal jurisdiction exists when
4 federal question presented on face of plaintiff's complaint).

5 13. Plaintiff's Complaint alleges a total of four causes of action, including the
6 cause of action for retaliation under Title VII. The remaining three causes of action alleged in
7 Plaintiff's Complaint are based on the same factual allegations giving rise to Plaintiff's Title VII
8 retaliation cause of action and generally assert state law claims for retaliation in violation of
9 California Government Code Section 12940 *et seq.*, wrongful termination, and intentional infliction
10 of emotional distress.

11 14. This Court has supplemental jurisdiction over Plaintiff's state law causes of
12 action for retaliation, wrongful termination, and intentional infliction of emotional distress, because
13 those claims are so related to Plaintiff's claim for retaliation under Title VII, which presents a
14 federal question and is within this Court's original jurisdiction, that they form part of the same case
15 or controversy. 28 U.S.C. § 1367(a); *City of Chicago v. International College of Surgeons*, 522 U.S.
16 156, 164-165 (1997); *Green v. Ralee Eng. Co.*, 19 Cal.4th 66, 71-72 (1998) (recognizing that the
17 basis for a claim of wrongful termination must be "tethered to" fundamental policies delineated in
18 constitutional or statutory provisions); *Wong v. Jing*, 189 Cal.App.4th 1354, 1378-1389 (2010)
19 (cause of action for infliction of emotional distress claims is duplicative in nature and merely
20 provides an "alternative legal theor[y] for holding defendants liable for the same conduct"
21 underlying other claims).

22 15. Plaintiff's state law claims expressly are based on the same operative facts
23 that comprise the basis for the federal retaliation claim. Complaint, ¶¶ 25, 31, 38, 42. In fact,
24 Plaintiff admits in his Complaint that supplemental jurisdiction exists over his state law claims. *See*,
25 *e.g., id.*, ¶ 39 ("Jurisdiction is invoked pursuant to 28 U.S.C. Section 1367"), ¶ 40 ("Plaintiff's
26 wrongful termination from his employment with Apple was based upon Defendants' violation of
27 public policy, including but not limited to the following: the fundamental public policies against
28 discrimination, harassment, and retaliation as expressed in the Civil Rights Act of 1964 and

1 subsequent amendments thereto”).

2 16. Accordingly, Plaintiff’s state law claims are based on the same factual
3 allegations as, and will necessarily involve common issues of law and fact to, Plaintiff’s claim for
4 retaliation under Title VII. Plaintiff’s state law causes of action do not involve any novel or complex
5 issue of state law and do not substantially predominate over Plaintiff’s cause of action for retaliation
6 under Title VII, and no exceptional or compelling circumstances exist for this Court to decline
7 jurisdiction. 28 U.S.C. § 1367(c).

8 **VII.**
9 **NOTICE TO PLAINTIFF AND STATE COURT**

10 17. Pursuant to 28 U.S.C. § 1446(d), Defendants concurrently are providing
11 written notice of this removal to Plaintiff, through his counsel. Also pursuant to 28 U.S.C.
12 § 1446(d), Defendants concurrently are filing a copy of such Notice with the clerk of the Sacramento
13 County Superior Court.

14 **WHEREFORE**, Plaintiff’s Complaint is removable to this Court pursuant to
15 28 U.S.C. §§ 1331, 1337(a), and 42 U.S.C. § 2000e-5(f), and Defendants hereby remove this action
16 from the Superior Court of the State of California, County of Sacramento, to the United States
17 District Court for the Eastern District of California and respectfully request this Court proceed with
18 the matter as if it had been filed originally herein.

19 Dated: August 2, 2012

20
21 

22 BENJAMIN L. WEBSTER
23 TODD M. RATSHIN
24 LITTLER MENDELSON, P.C.
25 Attorneys for Defendants
26 APPLE INC. and RHONDA HESS-
27 BEAVERS (sued erroneously herein as
28 “RHONDA HESS-BREWER”)

EXHIBIT A

COPY

7-3-12
100 per

BY FAX

**SUMMONS
(CITACION JUDICIAL)**

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

**NOTICE TO DEFENDANT:
(AVISO AL DEMANDADO):**

APPLE INC., a California corporation; RHONDA HESS-BREWER, an individual; and DOES 1 through 20, inclusive,

**YOU ARE BEING SUED BY PLAINTIFF:
(LO ESTÁ DEMANDANDO EL DEMANDANTE):**

DWAYNE RICHARDSON

NOTICE! You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association. **NOTE:** The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case. **¡AVISO!** Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.sucorte.ca.gov), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California (www.sucorte.ca.gov) o poniéndose en contacto con la corte o el colegio de abogados locales. **AVISO:** Por ley, la corte tiene derecho a reclamar las cuotas y los costos extras por imponer un gravamen sobre cualquier recuperación de \$10,000 ó más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

The name and address of the court is:
(El nombre y dirección de la corte es):

Gordon D. Schaber County Courthouse
720 9th Street Sacramento, CA 95814

CASE NUMBER:
(Número del Caso):
34-2012-00125 838

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:

(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):
SMITH PATTEN, Spencer F. Smith, Esq., 353 Sacramento Street, Suite 1120, San Francisco, CA 94111

DATE: 6/13/12 JUN 13 2012
(Fecha)

Clerk, by _____, Deputy
(Secretario) **M. PURCELL** (Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)
(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).



NOTICE TO THE PERSON SERVED: You are served

- as an individual defendant.
- as the person sued under the fictitious name of (specify):
- on behalf of (specify): **Apple Inc. a California Corporation**
under: CCP 416.10 (corporation) CCP 416.60 (minor)
 CCP 416.20 (defunct corporation) CCP 416.70 (conservatee)
 CCP 416.40 (association or partnership) CCP 416.90 (authorized person)
 other (specify):
- by personal delivery on (date):

7-3-12

COPY

1 SMITH PATTEN
2 SPENCER F. SMITH, ESQ. (SBN: 236587)
3 DOW W. PATTEN, ESQ. (SBN: 135931)
4 BETHANY J. SILVA, ESQ. (SBN: 273195)
5 353 Sacramento St., Suite 1120
6 San Francisco, California 94111
7 Telephone (415) 402-0084
8 Facsimile (415) 520-0104

9 Attorneys for Plaintiff
10 DWAYNE RICHARDSON

FILED
Superior Court Of California,
Sacramento
06/13/2012
inpurcell
By _____, Deputy
Case Number:
34-2012-00125838

11 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
12 FOR THE COUNTY OF SACRAMENTO

13 DWAYNE RICHARDSON, an individual,
14 Plaintiff,

15 v.

16 APPLE INC., a California corporation;
17 RHONDA HESS-BREWER, an individual;
18 and DOES 1 through 20, inclusive,
19 Defendants.

Case No.

COMPLAINT

- (1) RETALIATION; 42 U.S.C. § 2002-3(a)
- (2) RETALIATION; CAL. GOV. CODE § 12940 ET SEQ.
- (3) WRONGFUL TERMINATION
- (4) INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS

JURY TRIAL DEMANDED

Department
Assignments

Case Management 38
Law and Motion 53
Minors Compromise 24

RY FAX

20 Plaintiff DWAYNE RICHARSON (hereinafter "PLAINTIFF") alleges as follows:

21 JURISDICTION AND VENUE

- 22 1. This Court has federal question jurisdiction over this action pursuant to the California
23 Constitution, Article VI, Section 10 and under the California Fair Employment and Housing
24 Act, California Government Code Section 12940, et seq.
- 25 2. Venue is proper in Sacramento County as a substantial part of the events and omissions
26 giving rise to this claim occurred in the County of Sacramento, State of California, Defendant
27 RHONDA HESS-BREWER (hereinafter "MS. HESS-BREWER") is a resident of the
28

1 County of Sacramento, and Defendant, APPLE INC. (hereinafter "APPLE") operates and
2 maintains an office as part of its business in the County of Sacramento, State of California.

3 3. PLAINTIFF has been damaged in excess of the jurisdictional amount of this court.

4 INTRODUCTION

5 4. This is an action for damages for Retaliation, Wrongful Termination, and Sexual
6 Harassment. This action arises out of events involving PLAINTIFF, Defendant APPLE.

7 THE PARTIES

8 5. PLAINTIFF is African-American male currently employed by APPLE as an "Area
9 Manager", and is a resident of Sacramento County, California.

10 6. Defendant APPLE is a corporation organized and existing under the laws of the State of
11 California with its primary place of business in the County of Santa Clara, California.

12 7. Defendant MS. HESS-BREWER is an individual and APPLE employee, located and residing
13 in the County of Sacramento, California. To the best of PLAINTIFF's knowledge, MS.
14 HESS-BREWER is currently an Area Manager APPLE.

15 8. PLAINTIFF is ignorant of the true names and capacities of defendants sued herein as DOES
16 1 through 10, inclusive, and therefore PLAINTIFF sues such defendants by such fictitious
17 names. PLAINTIFF will amend this complaint to allege their true names and capacities
18 when ascertained. PLAINTIFF is informed and believes and thereon alleges that each of
19 these fictitiously named defendants is responsible in some manner for the occurrences, acts,
20 and omissions alleged herein and that PLAINTIFF's injuries, as alleged herein, were
21 proximately caused by such aforementioned defendants.

22 9. PLAINTIFF is informed and believes and thereon alleges that at all times mentioned herein,
23 each of the defendants was acting as the partner, agent, servant, and employee of each
24 remaining defendants, and in doing the things alleged herein, was acting within the course
25 and scope of such agency and with the knowledge of the remaining defendants, and that each
26 defendant is responsible for the occurrences, acts, and omissions of each other defendant
27 complained of herein.

28 ///

1 **FACTS COMMON TO ALL CAUSES OF ACTION**

2 10. On or about June 23, 2003 PLAINTIFF was hired by Defendant APPLE as a "Support
3 Specialist".

4 11. PLAINTIFF continued his employment with APPLE for nearly (9) years, uninterrupted and
5 without incident. In fact, to the contrary, PLAINTIFF was consistently promoted.

6 12. PLAINTIFF's job title at APPLE at the time of his termination was "Area Manager"
7 APPLE's Apple Care department at APPLE's Elk Grove office.

8 13. On or about February 9, 2012 APPLE employees from various APPLE departments and
9 offices, including PLAINTIFF and his co-workers, went to TGI Friday's in Elk Grove,
10 California for a work party. While there, many APPLE employees became intoxicated,
11 including PLAINTIFF, Defendant MS. HESS-BREWER and another Area Manager named
12 Janine Hicks (hereinafter "Ms. Hicks"). Throughout the evening, MS. HESS-BREWER was
13 extremely flirtatious with PLAINTIFF and made numerous inappropriate sexual advances
14 toward PLAINTIFF. When the party was over, Lisa Butler, a Senior Business Manager at
15 APPLE directed some of PLAINTIFF's co-workers to ensure that he got a taxi home. While
16 waiting for a taxi, MS. HESS-BREWER began rubbing PLAINTIFF's leg and genital area,
17 thereby sexually assaulting him, in violation of APPLE's policies and procedures. The
18 physical contact was unwelcomed by PLAINTIFF and he became embarrassed and
19 uncomfortable by it. PLAINTIFF was then aware that there were witnesses to MS. HESS-
20 BREWER's assault, including Ms. Hicks, who witnessed the entirety of the sexual assault.
21 PLAINTIFF was also then aware that he was the only African-American male Area Manager
22 and the only person subjected to MS. HESS-BREWER's assaulting behavior. When the taxi
23 arrived, the driver refused to take PLAINTIFF home. According to MS. HESS-BREWER
24 and Ms. Hicks, the taxi driver did not speak English and thus was the reason he refused to
25 take PLAINTIFF home. The two women then insisted on driving PLAINTIFF home in Ms.
26 Hicks' vehicle. MS. HESS-BREWER insisted on riding with them, even though it was not
27 necessary for her to do so. Upon arrival at PLAINTIFF's home, PLAINTIFF exited Ms.
28 Hicks' vehicle and went to his apartment where his fiance was waiting for him.

- 1 14. In or around March 2012, MS. HESS-BREWER asked PLAINTIFF to take on one of her
2 employees since PLAINTIFF was in charge of implementing the hiring program for the
3 AHA Mentoring Group. PLAINTIFF refused to hire said employee because the employee's
4 record showed discipline for unexcused absences from work. MS. HESS-BREWER became
5 angry that PLAINTIFF would not take on her employee and commented something to the
6 effect that PLAINTIFF was "just mad" that she allegedly rejected him at the February 9,
7 2012 APPLE work party at TGI Friday's. PLAINTIFF was confused by MS. HESS-
8 BREWER's comment but did decided not to make an issue of it. Instead, PLAINTIFF
9 eventually took on the above-mentioned employee because MS. HESS-BREWER cleared his
10 poor attendance record.
- 11 15. In or around March or April 2012, much to PLAINTIFF's surprise, APPLE informed
12 PLAINTIFF that MS. HESS-BREWER had complained that PLAINTIFF sexually harassed
13 her at APPLE's TGI Friday's work party on February 9, 2012. In so doing, MS. HESS-
14 BREWER alleged that PLAINTIFF had asked her and Ms. Hicks to come up to his apartment
15 to have sexual intercourse with him when they dropped him off at home at the conclusion of
16 the February 9, 2012 work party. PLAINTIFF made no such proposition at any time and his
17 position is substantiated by the fact that his fiance was in his apartment waiting for him that
18 evening.
- 19 16. In response to MS. HESS-BREWER's false accusations, PLAINTIFF felt compelled to set
20 the record straight and therefore made a complaint of his own regarding MS. HESS-
21 BREWER's unwelcomed sexual advancements on February 9, 2012.
- 22 17. As a result of PLAINTIFF and MS. HESS-BREWER's complaints, APPLE's Human
23 Resources Department conducted what it claimed to be a full investigation of the matter, but
24 said investigation was insincere and can only be characterized as a sub-standard and cursory
25 investigation. For example, the investigation was conducted by Phyllis Almanza (hereinafter
26 "Ms. Almanza") who had long-standing relationships with PLAINTIFF and MS. HESS-
27 BREWER, thereby preventing Ms. Almanza from being impartial. Additionally, and proving
28 her partiality, Ms. Almanza only interviewed three people: PLAINTIFF, MS. HESS-

1 BREWER, and Ms. Hicks. Ms. Almanza made no attempt to locate other witnesses or
2 evidence regarding the incident, despite PLAINTIFF's recommendation that she interview
3 the bartender at TGI Friday's on February 9, 2012 and the security tapes of the same date,
4 each of which PLAINTIFF is confident would prove his version of the incident to be true.

5 18. On or about April 4, 2012 PLAINTIFF was placed on paid suspension. APPLE cited
6 "inappropriate activity" as the reason for PLAINTIFF's suspension. MS. HESS-BREWER
7 was not placed on paid suspension nor did she receive any other form of disciplinary action.

8 19. On or about April 5, 2012 Ms. Almanza called PLAINTIFF for purposes of her investigation.
9 PLAINTIFF informed Ms. Almanza that he is represented by counsel and therefore could not
10 discuss the incident with her. On or about April 6, 2012, APPLE terminated PLAINTIFF, to
11 become effective on April 16, 2012.

12 20. On or about April 13, 2012 PLAINTIFF's counsel sent a demand letter to APPLE which
13 outlined the facts alleged above and demanded PLAINTIFF's reinstatement after a period of
14 medical leave. It was also demanded that PLAINTIFF be assigned to a manager other than
15 Tracy Simmons and an assurance that APPLE will cease sending company-wide
16 communications concerning PLAINTIFF's status in the company, as said communications
17 were tarnishing PLAINTIFF's reputation.

18 21. On or about April 16, 2012, corporate counsel for APPLE, Kwang Kim sent PLAINTIFF's
19 counsel a letter stating that APPLE would not be terminating PLAINTIFF as originally
20 planned, but would instead keep him on paid suspension while APPLE continued its
21 investigation.

22 22. Sometime on or around APPLE's April 16, 2012 letter, APPLE
23 "re-opened" its investigation of the February 9, 2012 incident. However, instead of
24 interviewing additional witnesses or obtaining other relevant evidence to that evening,
25 APPLE turned its investigation to the contents of PLAINTIFF's Time Machine backup of his
26 personal iPhone and the private information contained therein. APPLE made no such
27 investigation into MS. HESS-BREWER's personal information.

28

1 23. On or about April 11, 2012 PLAINTIFF filed an FEHA complaint and obtained a "right to
2 sue" letter on the same date.

3 24. On or about May 8, 2012 APPLE terminated PLAINTIFF's employment, claiming
4 "inappropriate activity" as the reason for termination.

5
6 **FIRST CAUSE OF ACTION**
7 **AGAINST DEFENDANTS APPLE INC. AND DOES 1-10**
8 **42 U.S.C. SECTION 20002-3(a)**
9 **RETALIATION**

10 25. The factual allegations of paragraphs 1 through 24 above are re-alleged and incorporated
11 herein by this reference.

12 26. Title VII of the Civil Rights Act of 1964, codified as 42 U.S.C. Section 2000e, makes it
13 unlawful for an employer to discriminate against any employee because "he has made a
14 charge, testified, assisted, or participated in any manner in an investigation, proceeding, or
15 hearing under this subchapter." 42 U.S.C. Section 2000e-3(a).

16 27. Defendants retaliated against PLAINTIFF, after PLAINTIFF engaged in activities and
17 conduct protected by 42 U.S.C. Section 2000e. Specifically, PLAINTIFF alleged an instance
18 of sexual harassment by a co-worker at APPLE and sought an investigation into such
19 unlawful behavior. Consequently, Defendant APPLE subjected PLAINTIFF to adverse
20 employment actions, including, but not limited to, harassment, suspension, and discharge.
21 These adverse actions were meant to dissuade PLAINTIFF, or any other reasonable
22 employees from making or supporting charges of sexual harassment and were causally
23 connected to PLAINTIFF's protected activities and conduct, as evidenced by Defendants'
24 conduct at the time which is stated in the facts set forth above.

25 28. Defendants retaliated against PLAINTIFF by ratifying, condoning or approving the acts
26 alleged in ¶ 17 through 19 above.

27 29. Defendants retaliated against PLAINTIFF by ratifying, condoning or approving the acts
28 alleged in ¶ 21 through 22 above.

29 30. Defendants retaliated against PLAINTIFF by ratifying, condoning or approving the acts
alleged in ¶ 24 above.

1 WHEREFORE, Plaintiff prays for relief as set forth below.

2
3 **SECOND CAUSE OF ACTION**
4 **AGAINST DEFENDANTS APPLE INC. AND DOES 1-10**
5 **CALIFORNIA GOVERNMENT CODE SECTION 12940 ET SEQ.**
6 **RETALIATION**

7 31. The factual allegations of paragraphs 1 through 30 above are re-alleged and incorporated
8 herein by this reference.

9 32. Jurisdiction is invoked pursuant to Section 12965, as amended, of the Government Code of
10 the State of California, seeking damages for violations of PLAINTIFF's employment rights
11 as protected by the Fair Employment and Housing Act (hereinafter "FEHA"), Government
12 Code Section 12940, et seq., which prohibits retaliation against an employee for protecting
13 against or refusing to participate in discriminatory employment actions prohibited by said
14 Act.

15 33. PLAINTIFF was an employee of Defendant APPLE and is a person protected by said
16 provisions of the FEHA.

17 34. During PLAINTIFF's employment, Defendants subjected him to egregious retaliatory actions
18 and conduct, as alleged herein, because of his complaint that he was the victim of sexual
19 harassment by a co-worker, which said harassment, when unaddressed, is an unlawful
20 discriminatory employment practice in violation of the FEHA.

21 35. As a direct result of the acts and conduct of Defendants as alleged herein, PLAINTIFF has
22 suffered and continues to suffer substantial loss of earnings and related employment benefits
23 in an amount to be proven at trial.

24 36. In doing the acts and engaging in the conduct alleged herein, Defendants intended to and did
25 vex, harass, annoy and cause PLAINTIFF to suffer and continue to suffer severe emotional
26 and physical distress.

27 37. Defendants committed the abusive actions alleged herein maliciously, fraudulently, and
28 oppressively, with the wrongful intention of injuring PLAINTIFF and from an improper and
evil motive amounting to malice, and in conscious and reckless disregard of Plaintiff's rights

1 as an employee. PLAINTIFF is thus entitled to recover punitive damages from Defendants
2 commensurate with its conduct as alleged.

3 WHEREFORE, Plaintiff prays for relief as set forth below.

4 **THIRD CAUSE OF ACTION**
5 **AGAINST DEFENDANTS APPLE INC. AND DOES 1-10**
6 **WRONGFUL TERMINATION IN VIOLATION OF PUBLIC POLICY**

7 38. The factual allegations of paragraphs 1 through 37 above are re-alleged and incorporated
8 herein by this reference.

9 39. Jurisdiction is invoked pursuant to 28 U.S.C. Section 1367.

10 40. PLAINTIFF's wrongful termination from his employment with APPLE was based upon
11 Defendants' violation of public policy, including but not limited to the following: the
12 fundamental public policies against discrimination, harassment, and retaliation as expressed
13 in the Civil Rights Act of 1964 and subsequent amendments thereto and the California Fair
14 Employment Act, as set forth above.

15 41. As a proximate result of Defendants' wrongful acts, PLAINTIFF has suffered and continues
16 to suffer substantial losses incurred in seeking substitute employment and in earnings,
17 bonuses, deferred compensation, stock options, seniority, and other employment benefits;
18 and has suffered and continues to suffer emotional distress in an amount according to proof
19 at the time of trial.

20 WHEREFORE, Plaintiff prays for relief as set forth below.

21 **FOURTH CAUSE OF ACTION**
22 **AGAINST DEFENDANTS RHONDA HESS-BREWER AND DOES 11-20**
23 **INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS**

24 42. The factual allegations of paragraphs 1 through 41 above are re-alleged and incorporated
25 herein by this reference.

26 43. Defendants intentionally and with malicious motive and bad faith, engaged in the
27 aforementioned conduct in ¶ 13 through 15 above which which was calculated to cause and
28 did cause PLAINTIFF to suffer severe psychological harm, humiliation and anxiety.

1 particularly since Defendants intentionally caused the actions and conduct against
2 PLAINTIFF as described herein.

3 44. Defendants' conduct was done with the knowledge that it would cause PLAINTIFF severe
4 psychological harm and was done with a wanton and reckless disregard of the consequences
5 to PLAINTIFF and with evil design and a malignant heart.

6 45. Defendants' conduct was extreme, outrageous and unlawful.

7 46. As a direct and proximate cause of Defendants' conduct, PLAINTIFF has suffered and
8 continues to suffer severe psychological harm.

9 47. As a result of said actions and conduct of Defendants, PLAINTIFF has suffered damages for
10 loss of earnings, loss of future earnings, and related employment benefits and opportunities.

11 48. The foregoing conduct by Defendants was intentional, willful, wrongful, malicious and done
12 in bad faith, and PLAINTIFF is entitled to punitive damages in an amount commensurate
13 with said wrongdoing and Defendants' financial ability.

14 WHEREFORE, Plaintiff prays for relief as set forth below.

15 **PUNITIVE DAMAGES**

16 49. The foregoing conduct by Defendants and Does 1 through 20 was intentional, willful,
17 wrongful, malicious and done in bad faith, and PLAINTIFF is entitled to punitive damages in
18 an amount commensurate with said wrongdoing and Defendants' financial ability.

19 **PRAYER FOR RELIEF**

20 WHEREFORE, Plaintiff prays for relief as follows:

- 21 1. For general damages in amounts according to proof and in no event in an amount
22 less than the jurisdictional limit of this court;
- 23 2. For back pay and front pay and special damages in amounts according to proof;
- 24 3. For attorneys' fees as provided by law;
- 25 4. For interest as provided by law;
- 26 5. For costs of suit herein;
- 27 6. For punitive damages in an amount sufficient to punish Defendants and deter
28 future unlawful conduct; and

1 7. For such other and further relief as the Court deems fair and just.

2 **JURY DEMAND**

3 PLAINTIFF hereby demands trial by jury of all matters so triable.

4
5 Dated: June 13, 2012

SMITH PATTEN

6
7 

8 SPENCER F. SMITH
9 DOW W. PATTEN
10 BETHANY J. SILVA
11 Attorneys for Plaintiff
12 DWAYNE RICHARDSON
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EXHIBIT B

1 BENJAMIN L. WEBSTER, Bar No. 132230
TODD M. RATSHIN, Bar No. 245450
2 LITTLER MENDELSON, P.C.
500 Capitol Mall
3 Suite 2000
Sacramento, CA 95814
4 Telephone: 916.830.7200
Fax No.: 916.561.0828

5 Attorneys for Defendants
6 APPLE INC. and RHONDA HESS-BEAVERS
7 (sued erroneously herein as "RHONDA HESS-
BREWER")

8 SUPERIOR COURT OF CALIFORNIA

9 COUNTY OF SACRAMENTO

10 DWAYNE RICHARDSON, an individual,

Case No. 34-2012-00125838

11 Plaintiff,

**DEFENDANT APPLE INC.'S ANSWER TO
PLAINTIFF'S COMPLAINT**

12 v.

Complaint Filed: June 13, 2012

13 APPLE INC., a California corporation;
14 RHONDA HESS-BREWER, an individual;
and DOES 1 through 20, inclusive,

15 Defendants.
16

17
18 Defendant APPLE INC., hereafter "Defendant," hereby answers the unverified
19 Complaint of Plaintiff DWAYNE RICHARDSON ("Plaintiff") and alleges as follows:

20 **GENERAL DENIAL**

21 Pursuant to California Code of Civil Procedure section 431.30, subdivision (d),
22 Defendant generally and specifically denies each and every allegation contained in Plaintiff's
23 Complaint, conjunctively and disjunctively. Defendant further denies that Plaintiff has sustained, or
24 will sustain, any injury, loss, or damage in any manner or amount whatsoever by reason of any act or
25 omission, or any other conduct or absence thereof, on the part of Defendant.
26
27
28

1 **DEFENSES**

2 Without waiving or excusing Plaintiff's burden of proof, or admitting that Defendant
3 has any burden of proof, Defendant asserts the following separate and distinct defenses to Plaintiff's
4 Complaint and each cause of action set forth therein:

5 **FIRST DEFENSE**

6 1. As a first separate and distinct defense, Defendant alleges that Plaintiff's
7 Complaint, and each cause of action set forth therein, is barred to the extent it fails to state facts
8 sufficient to constitute a cause of action against Defendant.

9 **SECOND DEFENSE**

10 2. As a second separate and distinct defense, Defendant alleges that Plaintiff's
11 Complaint, in whole or in part, is barred to the extent that Plaintiff failed to exhaust his available
12 administrative remedies pursuant to 42 U.S.C. § 2000e-5(e)(1) and California Government Code
13 sections 12960, subdivision (b), as well as any other applicable statute, and this Court thus lacks
14 jurisdiction over Plaintiff's Complaint.

15 **THIRD DEFENSE**

16 3. As a third separate and distinct defense, Defendant alleges that, to the extent
17 Plaintiff seeks recovery for his alleged emotional and/or physical injuries, such claims and damages
18 are barred by the exclusivity provisions of the Workers' Compensation Act, codified at California
19 Labor Code section 3600 *et seq.*

20 **FOURTH DEFENSE**

21 4. As a fourth separate and distinct defense, Defendant alleges that Plaintiff's
22 claims are barred, in whole or in part, by the doctrine of unclean hands.

23 **FIFTH DEFENSE**

24 5. As a fifth separate and distinct defense, Defendant alleges that Plaintiff's
25 claims are barred, in whole or in part, by the doctrines of estoppel, waiver, and/or laches.

26 **SIXTH DEFENSE**

27 6. As a sixth separate and distinct defense, Defendant alleges that even assuming
28 any unlawful or other wrongful acts by any officer, director, or employee of Defendant were taken as

1 against Plaintiff (which Defendant denies), Plaintiff's claims are barred to the extent Plaintiff
2 consented to any and all actions by Defendant.

3 **SEVENTH DEFENSE**

4 7. As a seventh separate and distinct defense, Defendant alleges that at all times
5 relevant herein, all actions taken with regard to Plaintiff's employment were just, fair, reasonable,
6 honest, in good faith, privileged, without discrimination and/or retaliation, based on legitimate and
7 lawful business reasons and needs, and based upon all relevant facts and circumstances known by
8 Defendant at the time of taking such actions.

9 **EIGHTH DEFENSE**

10 8. As an eighth separate and distinct defense, Defendant alleges that Plaintiff's
11 Complaint is barred, in whole or in part, based on the doctrine of after-acquired evidence and to the
12 extent any and all actions would have been taken against Plaintiff based on such after-acquired
13 evidence.

14 **NINTH DEFENSE**

15 9. As a ninth separate and distinct defense, Defendant alleges that, even
16 assuming any unlawful or other wrongful acts by any officer, director, or employee of Defendant
17 were taken as against Plaintiff (which Defendant denies), any such unlawful or other wrongful acts,
18 if any, were not authorized, ratified, or condoned by Defendant, and Defendant neither knew nor
19 reasonably should have known of such conduct.

20 **TENTH DEFENSE**

21 10. As a tenth separate and distinct defense, Defendant alleges that, even
22 assuming the occurrence of any conduct, act, and/or failure to act by any employee of Defendant or
23 anyone purporting to act on Defendant's behalf as alleged by Plaintiff (which Defendant denies), any
24 such conduct, act, and/or failure to act was outside and beyond the scope and course of any such
25 agent's employment with Defendant and contrary and in disregard of Defendant's interest, and
26 Defendant is thus not vicariously liable for any such acts and/or omissions of any other person by
27 way of *respondeat superior*, agency, or otherwise.

1 **ELEVENTH DEFENSE**

2 11. As an eleventh separate and distinct defense, Defendant alleges that, even
3 assuming any decision concerning Plaintiff was based, in part, on discriminatory, harassing or
4 retaliatory grounds (which Defendant denies), Defendant would have reached same decision absent
5 any alleged discrimination, harassment, or retaliation.

6 **TWELFTH DEFENSE**

7 12. As a twelfth separate and distinct defense, Defendant alleges that Plaintiff's
8 claims and any requested relief as against Defendant are barred, *inter alia*, under the doctrine of
9 avoidable consequences, because Defendant exercised reasonable care to prevent and promptly
10 correct any alleged discriminatory, harassing, retaliatory, and/or other wrongful conduct from
11 occurring, and Plaintiff unreasonably failed to complain or otherwise take advantage of any
12 preventive or corrective measures or opportunities.

13 **THRTEENTH DEFENSE**

14 13. As a thirteenth separate and distinct defense, Defendant alleges that the
15 Complaint, and each cause of action alleged therein, is barred to the extent any harm or damage
16 allegedly suffered by Plaintiff was caused by his own intentional and/or negligent acts and/or
17 omissions.

18 **FOURTEENTH DEFENSE**

19 14. As a fourteenth separate and distinct defense, Defendant alleges that
20 Plaintiff's claim(s) for special damages is barred by his failure to state such claim(s) with sufficient
21 specificity.

22 **FIFTEENTH DEFENSE**

23 15. As a fifteenth separate and distinct defense, Defendant alleges that if Plaintiff
24 has suffered any emotional distress (which Defendant denies), any such claim by Plaintiff is barred
25 to the extent such emotional distress was proximately caused by factors other than Plaintiff's
26 employment and/or the actions of Defendant or anyone acting on Defendant's behalf.

27 **SIXTEENTH DEFENSE**

28 16. As a sixteenth separate and distinct defense, Defendant alleges that to the

1 extent Plaintiff has suffered any emotional and/or physical injuries (which Defendant denies), any
2 such claims by Plaintiff are barred to the extent such emotional and/or physical injuries were
3 incurred or sustained outside the course and scope of his employment with Defendant.

4 **SEVENTEENTH DEFENSE**

5 17. As a seventeenth separate and distinct defense, Defendant alleges that at no
6 time did Defendant act maliciously, oppressively, fraudulently, or with reckless indifference with
7 respect to Plaintiff or Plaintiff's rights or employment, or otherwise authorize, consent to, and/or
8 ratify any malicious, oppressive, fraudulent, or recklessly indifferent conduct of any employee or
9 agent of Defendant toward Plaintiff.

10 **EIGHTEENTH DEFENSE**

11 18. As an eighteenth separate and distinct defense, Defendant alleges that Plaintiff
12 is prohibited from recovering any punitive or exemplary damages, including any damages pursuant
13 to 42 U.S.C. § 1981a, California Civil Code section 3294, or any similar statute, against Defendant.

14 **NINETEENTH DEFENSE**

15 19. As a nineteenth separate and distinct defense, Defendant alleges, to the extent
16 it is determined Plaintiff is entitled to any recovery against Defendant (which Plaintiff is not), any
17 such recovery is precluded and barred, in whole or in part, by virtue of Plaintiff's failure to exercise
18 reasonable diligence or care to mitigate any injury, loss, or damage allegedly sustained by him.

19 **TWENTIETH DEFENSE**

20 20. As a twentieth separate and distinct defense, Defendant alleges that even
21 assuming Plaintiff is entitled to any recovery against Defendant (which Defendant denies), any
22 damages recoverable by Plaintiff must be reduced and offset against any income obtained by
23 Plaintiff from other employment or from other sources.

24 **TWENTY-FIRST DEFENSE**

25 21. As a twenty-first separate and distinct defense, Defendant alleges that a
26 reasonable opportunity for investigation and discovery will reveal, and on that basis alleges, that
27 Plaintiff's claims are unreasonable, pursued in bad faith, and/or frivolous so as to justify an award of
28 attorney's fees and costs and against Plaintiff and his attorneys. Defendant reserves the right to

1 amend its answer upon further investigation and discovery of facts supporting this defense.

2 **RESERVATION OF RIGHTS AND ADDITIONAL DEFENSES**

3 Defendant alleges that the Complaint does not describe the claims or facts with
4 sufficient particularity, and is couched in conclusory terms, so as to permit Defendant to ascertain
5 what other defenses may exist. Accordingly, Defendant reserves the right to assert and rely on any
6 and all further defenses that become available or appear during discovery in this action, and
7 Defendant expressly reserves the right to amend this Answer for the purpose of asserting such
8 additional defenses. Defendant additionally reserves the right to amend this Answer should
9 Defendant later discover facts demonstrating the existence of new and/or additional defenses, and/or
10 should a change in the law support the inclusion of new and/or additional defenses.

11 **PRAYER**

12 WHEREFORE, Defendant prays for judgment as follows:

- 13 1. That Plaintiff take nothing by his Complaint;
- 14 2. That Plaintiff's Complaint be dismissed, in its entirety, with prejudice, with
15 judgment entered against Plaintiff and in favor of Defendant on all causes of action;
- 16 3. That Defendant be awarded its costs of suit and attorney's fees incurred herein;
- 17 and
- 18 4. That Defendant be awarded such other and further relief as the Court deems just
19 and proper.

20
21 Dated: August 1, 2012

22
23 

24 BENJAMIN L. WEBSTER
25 TODD M. RATSHIN
26 LITTLER MENDELSON, P.C.
27 Attorneys for Defendants
28 APPLE INC. and RHONDA HESS-
BEAVERS (sued erroneously herein as
"RHONDA HESS-BREWER")

1 **PROOF OF SERVICE**

2
3 I am a resident of the State of California, over the age of eighteen years, and not a
4 party to the within action. My business address is 500 Capitol Mall, Suite 2000, Sacramento,
5 California 95814. On August 1, 2012, I served the within document(s):

6 **DEFENDANT APPLE INC.'S ANSWER TO PLAINTIFF'S**
7 **COMPLAINT**

- 8 by facsimile transmission at or about _____ on that date. This document
9 was transmitted by using a facsimile machine that complies with California Rules
10 of Court Rule 2003(3), telephone number 916.561.0828. The transmission was
11 reported as complete and without error. A copy of the transmission report, properly
12 issued by the transmitting machine, is attached. The names and facsimile numbers
13 of the person(s) served are as set forth below.
- 14 by placing a true copy of the document(s) listed above for collection and mailing
15 following the firm's ordinary business practice in a sealed envelope with postage
16 thereon fully prepaid for deposit in the United States mail at Sacramento,
17 California addressed as set forth below.
- 18 by depositing a true copy of the same enclosed in a sealed envelope, with delivery
19 fees provided for, in an overnight delivery service pick up box or office designated
20 for overnight delivery, and addressed as set forth below.
- 21 by personally delivering a copy of the document(s) listed above to the person(s) at
22 the address(es) set forth below.
- 23 Based on a court order or an agreement of the parties to accept service by e-mail or
24 electronic transmission, I caused the documents to be sent to the persons at the e-
25 mail addresses on the attached service list on the dates and at the times stated
26 thereon. I did not receive, within a reasonable time after the transmission, any
27 electronic message or other indication that the transmission was unsuccessful. The
28 electronic notification address of the person making the service is
_____@littler.com.

Spencer F. Smith, Esq.
Dow W. Patten, Esq.
Bethany J. Silva, Esq.
SMITH PATTEN
353 Sacramento Street, Suite 1120
San Francisco, CA 94111
Fax: (415) 520-0104

I am readily familiar with the firm's practice of collection and processing

1 correspondence for mailing and for shipping via overnight delivery service. Under that practice it
2 would be deposited with the U.S. Postal Service or if an overnight delivery service shipment,
3 deposited in an overnight delivery service pick-up box or office on the same day with postage or fees
4 thereon fully prepaid in the ordinary course of business.

5 I declare under penalty of perjury under the laws of the State of California that the
6 above is true and correct. Executed on August 1, 2012, at Sacramento, California.

Geri Prevatt

Geri Prevatt

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EXHIBIT C

1 BENJAMIN L. WEBSTER, Bar No. 132230
2 TODD M. RATSHIN, Bar No. 245450
3 LITTLER MENDELSON, P.C.
4 500 Capitol Mall
5 Suite 2000
6 Sacramento, CA 95814
7 Telephone: 916.830.7200
8 Fax No.: 916.561.0828

9 Attorneys for Defendants
10 APPLE INC. and RHONDA HESS-BEAVERS
11 (sued erroneously herein as "RHONDA HESS-
12 BREWER")

13 SUPERIOR COURT OF CALIFORNIA
14 COUNTY OF SACRAMENTO

15 DWAYNE RICHARDSON, an individual,
16 Plaintiff,

17 v.

18 APPLE INC., a California corporation;
19 RHONDA HESS-BREWER, an individual;
20 and DOES 1 through 20, inclusive,
21 Defendants.

Case No. 34-2012-00125838

**DEFENDANT RHONDA HESS-BEAVERS'
ANSWER TO PLAINTIFF'S COMPLAINT**

Complaint Filed: June 13, 2012

22 Defendant RHONDA HESS-BEAVERS, sued erroneously herein as RHONDA
23 HESS-BREWER, hereafter "Defendant," hereby answers the unverified Complaint of Plaintiff
24 DWAYNE RICHARDSON ("Plaintiff") and alleges as follows:

25 **GENERAL DENIAL**

26 Pursuant to California Code of Civil Procedure section 431.30, subdivision (d),
27 Defendant generally and specifically denies each and every allegation contained in Plaintiff's
28 Complaint, conjunctively and disjunctively. Defendant further denies that Plaintiff has sustained, or
will sustain, any injury, loss, or damage in any manner or amount whatsoever by reason of any act or
omission, or any other conduct or absence thereof, on the part of Defendant.

Firmwide: 113318803.4 043907.1139

DEFENDANT RHONDA HESS-BEAVERS' ANSWER TO PLAINTIFF'S COMPLAINT

1 **DEFENSES**

2 Without waiving or excusing Plaintiff's burden of proof, or admitting that Defendant
3 has any burden of proof, Defendant asserts the following separate and distinct defenses to Plaintiff's
4 Complaint and each cause of action set forth therein:

5 **FIRST DEFENSE**

6 1. As a first separate and distinct defense, Defendant alleges that Plaintiff's
7 Complaint is barred to the extent it fails to state facts sufficient to constitute a cause of action against
8 Defendant.

9 **SECOND DEFENSE**

10 2. As a second separate and distinct defense, Defendant alleges that Plaintiff's
11 Complaint, in whole or in part, is barred to the extent that Plaintiff failed to exhaust his available
12 administrative remedies pursuant to 42 U.S.C. § 2000e-5(e)(1) and California Government Code
13 sections 12960, subdivision (b), as well as any other applicable statute, and this Court thus lacks
14 jurisdiction over Plaintiff's Complaint.

15 **THIRD DEFENSE**

16 3. As a third separate and distinct defense, Defendant alleges that, to the extent
17 Plaintiff seeks recovery for his alleged emotional and/or physical injuries, such claims and damages
18 are barred by the exclusivity provisions of the Workers' Compensation Act, codified at California
19 Labor Code section 3600 *et seq.*

20 **FOURTH DEFENSE**

21 4. As a fourth separate and distinct defense, Defendant alleges that Plaintiff's
22 claims are barred, in whole or in part, by the doctrine of unclean hands.

23 **FIFTH DEFENSE**

24 5. As a fifth separate and distinct defense, Defendant alleges that Plaintiff's
25 claims are barred, in whole or in part, by the doctrines of estoppel, waiver, and/or laches.

26 **SIXTH DEFENSE**

27 6. As a sixth separate and distinct defense, Defendant alleges that even assuming
28 any unlawful or other wrongful acts by Defendant were taken as against Plaintiff (which Defendant

1 denies), Plaintiff's claims are barred to the extent Plaintiff consented to any and all actions by
2 Defendant.

3 **SEVENTH DEFENSE**

4 7. As a seventh separate and distinct defense, Defendant alleges that at all times
5 relevant herein, all actions taken with regard to Plaintiff or Plaintiff's rights or employment were
6 just, fair, reasonable, honest, in good faith, privileged, without discrimination and/or retaliation,
7 based on legitimate and lawful business reasons and needs, and based upon all relevant facts and
8 circumstances known by Defendant at the time of taking such actions.

9 **EIGHTH DEFENSE**

10 8. As an eighth separate and distinct defense, Defendant alleges that Plaintiff's
11 Complaint is barred, in whole or in part, based on the doctrine of after-acquired evidence and to the
12 extent any and all actions would have been taken against Plaintiff based on such after-acquired
13 evidence.

14 **NINTH DEFENSE**

15 9. As a ninth separate and distinct defense, Defendant alleges that the Complaint,
16 and each cause of action alleged therein, is barred to the extent any harm or damage allegedly
17 suffered by Plaintiff was caused by his own intentional and/or negligent acts and/or omissions.

18 **TENTH DEFENSE**

19 10. As a tenth separate and distinct defense, Defendant alleges that Plaintiff's
20 claim(s) for special damages is barred by his failure to state such claim(s) with sufficient specificity.

21 **ELEVENTH DEFENSE**

22 11. As an eleventh separate and distinct defense, Defendant alleges that if Plaintiff
23 suffered any emotional distress (which Defendant denies), Plaintiff contributed to any such
24 emotional distress through his own failure to pursue or avail himself of any internal procedures or
25 preventive measures available to him.

26 **TWELFTH DEFENSE**

27 12. As a twelfth separate and distinct defense, Defendant alleges that if Plaintiff
28 has suffered any emotional distress (which Defendant denies), any such claim by Plaintiff is barred

1 to the extent such emotional distress was proximately caused by factors other than the actions of
2 Defendant or anyone acting on Defendant's behalf.

3 **THIRTEENTH DEFENSE**

4 13. As a thirteenth separate and distinct defense, Defendant alleges that at no time
5 did Defendant act maliciously, oppressively, fraudulently, or with reckless indifference with respect
6 to Plaintiff or Plaintiff's rights or employment, or otherwise authorize, consent to, and/or ratify any
7 malicious, oppressive, fraudulent, or recklessly indifferent conduct of any employee or agent of
8 Defendant toward Plaintiff.

9 **FOURTEENTH DEFENSE**

10 14. As a fourteenth separate and distinct defense, Defendant alleges that Plaintiff
11 is prohibited from recovering any punitive or exemplary damages, including any damages pursuant
12 to 42 U.S.C. § 1981a, California Civil Code section 3294, or any similar statute, against Defendant.

13 **FIFTEENTH DEFENSE**

14 15. As a fifteenth separate and distinct defense, Defendant alleges, to the extent it
15 is determined Plaintiff is entitled to any recovery against Defendant (which Plaintiff is not), any such
16 recovery is precluded and barred, in whole or in part, by virtue of Plaintiff's failure to exercise
17 reasonable diligence or care to mitigate any injury, loss, or damage allegedly sustained by him.

18 **SIXTEENTH DEFENSE**

19 16. As a sixteenth separate and distinct defense, Defendant alleges that even
20 assuming Plaintiff is entitled to any recovery against Defendant (which Defendant denies), any
21 damages recoverable by Plaintiff must be reduced and offset against any income obtained by
22 Plaintiff from other employment or from other sources.

23 **SEVENTEENTH DEFENSE**

24 17. As a seventeenth separate and distinct defense, Defendant alleges that a
25 reasonable opportunity for investigation and discovery will reveal, and on that basis alleges, that
26 Plaintiff's claims are unreasonable, pursued in bad faith, and/or frivolous so as to justify an award of
27 attorney's fees and costs and against Plaintiff and his attorneys. Defendant reserves the right to
28 amend her answer upon further investigation and discovery of facts supporting this defense.

1 **PROOF OF SERVICE**

2
3 I am a resident of the State of California, over the age of eighteen years, and not a
4 party to the within action. My business address is 500 Capitol Mall, Suite 2000, Sacramento,
5 California 95814. On August 1, 2012, I served the within document(s):

6 **DEFENDANT RHONDA HESS-BEAVERS' ANSWER TO**
7 **PLAINTIFF'S COMPLAINT**

- 8 by facsimile transmission at or about _____ on that date. This document
9 was transmitted by using a facsimile machine that complies with California Rules
10 of Court Rule 2003(3), telephone number 916.561.0828. The transmission was
11 reported as complete and without error. A copy of the transmission report, properly
12 issued by the transmitting machine, is attached. The names and facsimile numbers
13 of the person(s) served are as set forth below.
- 14 by placing a true copy of the document(s) listed above for collection and mailing
15 following the firm's ordinary business practice in a sealed envelope with postage
16 thereon fully prepaid for deposit in the United States mail at Sacramento,
17 California addressed as set forth below.
- 18 by depositing a true copy of the same enclosed in a sealed envelope, with delivery
19 fees provided for, in an overnight delivery service pick up box or office designated
20 for overnight delivery, and addressed as set forth below.
- 21 by personally delivering a copy of the document(s) listed above to the person(s) at
22 the address(es) set forth below.
- 23 Based on a court order or an agreement of the parties to accept service by e-mail or
24 electronic transmission, I caused the documents to be sent to the persons at the e-
25 mail addresses on the attached service list on the dates and at the times stated
26 thereon. I did not receive, within a reasonable time after the transmission, any
27 electronic message or other indication that the transmission was unsuccessful. The
28 electronic notification address of the person making the service is
_____@littler.com.

Spencer F. Smith, Esq.
Dow W. Patten, Esq.
Bethany J. Silva, Esq.
SMITH PATTEN
353 Sacramento Street, Suite 1120
San Francisco, CA 94111
Fax: (415) 520-0104

I am readily familiar with the firm's practice of collection and processing

1 correspondence for mailing and for shipping via overnight delivery service. Under that practice it
2 would be deposited with the U.S. Postal Service or if an overnight delivery service shipment,
3 deposited in an overnight delivery service pick-up box or office on the same day with postage or fees
4 thereon fully prepaid in the ordinary course of business.

5 I declare under penalty of perjury under the laws of the State of California that the
6 above is true and correct. Executed on August 1, 2012, at Sacramento, California.

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9 Geri Prevatt

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1 **PROOF OF SERVICE**

2
3 I am a resident of the State of California, over the age of eighteen years, and not a
4 party to the within action. My business address is 500 Capitol Mall, Suite 2000, Sacramento,
5 California 95814. On August 2, 2012, I served the within document(s):

6 **NOTICE OF REMOVAL OF CIVIL ACTION TO FEDERAL**
7 **COURT FROM STATE COURT BY DEFENDANTS**

8 by facsimile transmission at or about _____ on that date. This document
9 was transmitted by using a facsimile machine that complies with California Rules
10 of Court Rule 2003(3), telephone number 916.561.0828. The transmission was
11 reported as complete and without error. A copy of the transmission report, properly
12 issued by the transmitting machine, is attached. The names and facsimile numbers
13 of the person(s) served are as set forth below.

14 by placing a true copy of the document(s) listed above for collection and mailing
15 following the firm's ordinary business practice in a sealed envelope with postage
16 thereon fully prepaid for deposit in the United States mail at Sacramento,
17 California addressed as set forth below.

18 by depositing a true copy of the same enclosed in a sealed envelope, with delivery
19 fees provided for, in an overnight delivery service pick up box or office designated
20 for overnight delivery, and addressed as set forth below.

21 by personally delivering a copy of the document(s) listed above to the person(s) at
22 the address(es) set forth below.

23 Based on a court order or an agreement of the parties to accept service by e-mail or
24 electronic transmission, I caused the documents to be sent to the persons at the e-
25 mail addresses on the attached service list on the dates and at the times stated
26 thereon. I did not receive, within a reasonable time after the transmission, any
27 electronic message or other indication that the transmission was unsuccessful. The
28 electronic notification address of the person making the service is
_____@littler.com.

Spencer F. Smith, Esq.
Dow W. Patten, Esq.
Bethany J. Silva, Esq.
SMITH PATTEN
353 Sacramento Street, Suite 1120
San Francisco, CA 94111
Fax: (415) 520-0104

I am readily familiar with the firm's practice of collection and processing

1 correspondence for mailing and for shipping via overnight delivery service. Under that practice it
2 would be deposited with the U.S. Postal Service or if an overnight delivery service shipment,
3 deposited in an overnight delivery service pick-up box or office on the same day with postage or fees
4 thereon fully prepaid in the ordinary course of business.

5 I declare under penalty of perjury under the laws of the State of California that the
6 above is true and correct. Executed on August 2, 2012, at Sacramento, California.

7
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9 _____
10 Geri Prevatt

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