

**SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN FRANCISCO**

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Dec-21-2012 12:38 pm

Case Number: CGC-12-527387

Filing Date: Dec-21-2012 12:32

Filed by: DENNIS TOYAMA

Juke Box: 001 Image: 03883693

COMPLAINT

CINDY QIWANG XU VS. THE RITZ-CARLTON HOTEL COMPANY, LLC et al

001C03883693

Instructions:

Please place this sheet on top of the document to be scanned.

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address):

Michael H. Kim (SBN 200792)

MICHAEL H. KIM, P.C.

475 El Camino Real #309

Millbrae, CA 94030

TELEPHONE NO.: (650) 697-8899

FAX NO.: (650) 697-8896

ATTORNEY FOR (Name): CINDY QIWANG XU

FOR COURT USE ONLY

FILED
San Francisco County Superior Court

DEC 21 2012

CLERK OF THE COURT
DENNIS TOYAMA

BY: Deputy Clerk

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN FRANCISCO

STREET ADDRESS: 400 McAllister Street

MAILING ADDRESS:

CITY AND ZIP CODE: San Francisco, CA 94102

BRANCH NAME: Civic Center Courthouse

CASE NAME:

Cindy Xu v. The Ritz-Carlton Hotel Company

CIVIL CASE COVER SHEET
☒ **Unlimited**
(Amount
demanded
exceeds \$25,000)
 ☐ **Limited**
(Amount
demanded is
\$25,000 or less)
Complex Case Designation
☐ **Counter**
☐ **Joinder**

 Filed with first appearance by defendant
(Cal. Rules of Court, rule 3.402)

CASE NUMBER:

CGC 12-527387

JUDGE:

DEPT:

Items 1-6 below must be completed (see instructions on page 2).

1. Check one box below for the case type that best describes this case:

Auto Tort
☐ Auto (22)
☐ Uninsured motorist (46)
Other PI/DP/WD (Personal Injury/Property Damage/Wrongful Death) Tort
☐ Asbestos (04)
☐ Product liability (24)
☐ Medical malpractice (45)
☐ Other PI/DP/WD (23)
Non-PI/DP/WD (Other) Tort
☐ Business tort/unfair business practice (07)
☐ Civil rights (08)
☐ Defamation (13)
☐ Fraud (16)
☐ Intellectual property (19)
☐ Professional negligence (25)
☐ Other non-PI/DP/WD tort (35)
Employment
☐ Wrongful termination (36)
☒ Other employment (15)
Contract
☐ Breach of contract/warranty (06)
☐ Rule 3.740 collections (09)
☐ Other collections (09)
☐ Insurance coverage (18)
☐ Other contract (37)
Real Property
☐ Eminent domain/inverse
condemnation (14)
☐ Wrongful eviction (33)
☐ Other real property (26)
Unlawful Detainer
☐ Commercial (31)
☐ Residential (32)
☐ Drugs (38)
Judicial Review
☐ Asset forfeiture (05)
☐ Petition re: arbitration award (11)
☐ Writ of mandate (02)
☐ Other judicial review (39)
Provisionally Complex Civil Litigation
(Cal. Rules of Court, rules 3.400-3.403)
☐ Antitrust/Trade regulation (03)
☐ Construction defect (10)
☐ Mass tort (40)
☐ Securities litigation (28)
☐ Environmental/Toxic tort (30)
☐ Insurance coverage claims arising from the
above listed provisionally complex case
types (41)
Enforcement of Judgment
☐ Enforcement of judgment (20)
Miscellaneous Civil Complaint
☐ RICO (27)
☐ Other complaint (not specified above) (42)
Miscellaneous Civil Petition
☐ Partnership and corporate governance (21)
☐ Other petition (not specified above) (43)
2. This case ☐ is ☒ is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:

- a. ☐ Large number of separately represented parties
 b. ☐ Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve
 c. ☐ Substantial amount of documentary evidence
 d. ☐ Large number of witnesses
 e. ☐ Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court
 f. ☐ Substantial postjudgment judicial supervision

3. Remedies sought (check all that apply): a. ☒ monetary b. ☐ nonmonetary; declaratory or injunctive relief c. ☒ punitive

4. Number of causes of action (specify): 4

5. This case ☐ is ☒ is not a class action suit.

6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: 12/13/2012

Michael H. Kim

(TYPE OR PRINT NAME)

(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

NOTICE

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

Page 1 of 2

SUMMONS (CITACION JUDICIAL)

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

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

THE RITZ-CARLTON HOTEL COMPANY, LLC; RAUL GUILLERMO; and DOES 1-100, inclusive

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

CINDY QIWANG XU

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 exentos 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): San Francisco Superior Court
400 McAllister St.
San Francisco, CA 94102-4515

CASE NUMBER:
(Número de Caso): CGC 12-527387

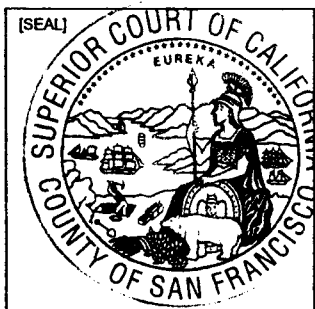
The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:
(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):
Michael H. Kim, 475 El Camino Real, Suite 309 Millbrae, CA 94030 ;Telephone: (650) 697-8899

DATE:
(Fecha) DEC 21 2012

CLERK OF THE COURT

Clerk, by
(Secretario) *Dennis Toyama* DENNIS TOYAMA, Deputy
(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

1. ☐ as an individual defendant.
2. ☐ as the person sued under the fictitious name of (specify):
3. ☐ on behalf of (specify):

under: <input type="checkbox"/> CCP 416.10 (corporation)	<input type="checkbox"/> CCP 416.60 (minor)
<input type="checkbox"/> CCP 416.20 (defunct corporation)	<input type="checkbox"/> CCP 416.70 (conservatee)
<input type="checkbox"/> CCP 416.40 (association or partnership)	<input type="checkbox"/> CCP 416.90 (authorized person)
<input type="checkbox"/> other (specify):	
4. ☐ by personal delivery on (date):

DEC 21 2012

CLERK OF THE COURT
BY: DENNIS TOYAMA
Deputy Clerk

1 Michael H. Kim, Esq. (State Bar No. 200792)

2 **MICHAEL H. KIM, P.C.**

3 475 El Camino Real, Suite 309

4 Millbrae, CA 94030

5 Telephone: (650) 697-8899

6 Facsimile: (650) 697-8896

7 Attorney for Plaintiff

8 **CINDYQIWANG XU**

9 **IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA**

10 **IN AND FOR THE COUNTY OF SAN FRANCISCO**

11 **CINDY QIWANG XU,**

) Case No.

12 Plaintiff,

13 vs.

) **COMPLAINT FOR: CGC 12-527387**

14 **THE RITZ-CARLTON HOTEL COMPANY, LLC; RAUL GUILLERMO; and DOES 1-100, inclusive,**

15 Defendants.

-) (1) SEXUAL HARASSMENT - FEHA
) (2) FAILURE TO PREVENT
) HARASSMENT - FEHA
) (3) INTENTIONAL INFLICTION OF
) EMOTIONAL DISTRESS
) (4) NEGLIGENT INFLICTION OF
) EMOTIONAL DISTRESS

18) **JURY TRIAL DEMANDED**

19)
20)
21 Plaintiff, by and through her attorneys of record, avers and alleges as follows:

22 **THE PARTIES**

23 1. Plaintiff CINDY QIWANG XU (hereinafter "Plaintiff") is an individual and
24 resident of the City and County of San Francisco, California. At all relevant times herein,
25 Plaintiff was an employee of defendant THE RITZ-CARLTON HOTEL COMPANY, LLC. She
26 was employed as a hotel maid at the Ritz-Carlton Club and Residences located at 690 Market
27 Street, San Francisco, CA. Plaintiff entered into employment and was subjected to the wrongful
28 conduct and discriminatory actions alleged herein in San Francisco, California, specifically at

1 Defendant's Ritz-Carlton Club and Residences located at 690 Market Street, San Francisco, CA.
2 Plaintiff exhausted her administrative remedies by timely filing a complaint with the California
3 Department of Fair Employment and Housing ("DFEH") against each defendant and obtaining a
4 Right-to-Sue Notice within one year of the filing of this lawsuit.

5 2. Plaintiff is informed and believes and thereon alleges that Defendant THE RITZ-
6 CARLTON HOTEL COMPANY, LLC is a Delaware Limited Liability Company corporation
7 doing business in San Francisco, CA. On information and belief, Defendant THE RITZ-
8 CARLTON HOTEL COMPANY, LLC owns and operates luxury hotels, resorts, and residences
9 throughout the world, including but not limited to the Ritz-Carlton Club and Residence located at
10 690 Market Street, San Francisco, CA.

11 3. Plaintiff is informed and believes and thereon alleges that Defendant RAUL
12 GUILLERMO is an individual and at all relevant time herein was a resident of the City and
13 County of San Francisco, State of California. On information and belief, RAUL GUILLERMO
14 resides and works in San Francisco, California. At all relevant times herein, RAUL
15 GUILLERMO was a housekeeping supervisor for defendant THE RITZ-CARLTON HOTEL
16 COMPANY, LLC at the Ritz-Carlton Club and Residences located at 690 Market Street, San
17 Francisco, CA.

18 4. The true names and capacities of defendants Does 1 through 100, inclusive, and
19 each of them, are unknown to Plaintiff, who sues said defendants by such fictitious names.
20 Plaintiff is informed and believes and thereon alleges that each of the defendants fictitiously
21 named herein is legally responsible in some actionable manner for the events described herein,
22 and thereby proximately caused the damage to Plaintiff. Plaintiff will seek leave of Court to
23 amend this Complaint to state the true name(s) and capacities of such fictitiously named
24 defendants when the same have been ascertained.

25 5. Plaintiff is informed and believes, and thereon alleges, that defendants, including
26 Does 1 through 100, inclusive, are now, and/or at all times mentioned in this Complaint were the
27 agents, servants and/or employees of some or all other Defendants, and vice-versa, and in doing
28

1 the things alleged in this Complaint, Defendants are now and/or at all times mentioned in this
2 Complaint were acting within the course and scope of that agency, servitude and/or employment.

3 6. Defendants, including Does 1 through 100, inclusive, are now, and/or at all times
4 mentioned in this Complaint were the affiliates of some or all other Defendants, and vice-versa,
5 and in doing the thing alleged in this Complaint, Defendants were directly or indirectly
6 controlling, controlled by or under common control with such other Defendants.

7 7. Defendants, including Does 1 through 100, inclusive, are now, and/or at all times
8 mentioned in this Complaint were the agents, servants and/or employees of some or all other
9 Defendants, and vice-versa, and in doing the things alleged in this Complaint, Defendants are
10 now and/or at all times mentioned in this Complaint were acting within the course and scope of
11 that agency, servitude and/or employment,

12 8. Defendants, including Does 1 through 100, inclusive, are now, and/or at all times
13 mentioned in this Complaint were members of, and/or engaged in, a joint venture, partnership
14 and common enterprise, and acting within the course and scope of, and in pursuance of said joint
15 venture, partnership and common enterprise.

16 9. Defendants, including Does 1 through 100, inclusive, at all times mentioned in
17 this Complaint approved of, condoned and/or otherwise ratified each and every one of the acts
18 and/or omissions alleged in this Complaint.

19
20 **GENERAL ALLEGATIONS**

21 10. At all relevant times herein, Plaintiff worked as a hotel maid at the Ritz-Carlton
22 Club and Residences located at 690 Market Street, San Francisco, CA. At all relevant times,
23 RAUL GUILLERMO was the housekeeping supervisor in charge of supervising and
24 coordinating the work of Plaintiff and other members of the housekeeping staff. He was
25 responsible for scheduling cleaning crews to various floors and instructing what cleaning tasks
26 are to be done, and when these tasks should be completed.

27 11. Over the past 2 years, plaintiff has been regularly subjected to sexually offensive
28 and hostile conduct by the company's housekeeping supervisor, Raul Guillermo, which became a

1 condition of her employment and which created an intimidating, hostile, and abusive work
2 environment. He sexually assaulted her, touched, grabbed, and groped her, tried to kiss her,
3 made sexually explicit comments, gestures, and facial expressions at her, made sexual advances
4 towards her, and asked her to have sex with him. His sexually offensive conduct was directed
5 towards other female members of the hotel housekeeping staff as well. conduct.

6 12. Defendant RAUL GUILLERMO's offensive and sexual conduct towards Plaintiff
7 went on for 2 years. Defendant RAUL GUILLERMO directed similarly hostile and offensive
8 conduct towards other female members of the hotel housekeeping staff during the same time
9 period and continues to sexually harass them even after Plaintiff complained to the hotel
10 management about his conduct and filed a report with the San Francisco Police Department.

11 13. Plaintiff reported these incidents to the manager, Roberto Gamala, and the Human
12 Resources Department, and filed a written report of the incidents. She even spoke with Liz
13 Wong, a HR representative of the hotel, regarding Raul Guillermo. When Plaintiff asked Liz
14 and Roberto about the status of their investigation into Defendant Guillermo's conduct and
15 behavior, they ignored her, refused to help her with the situation, and told her that it is the
16 company's policy not to get involved.

17
18 **FIRST CAUSE OF ACTION**

19 **SEXUAL HARASSMENT**

20 **FEHA - CAL. GOVT. CODE § 12940 et seq.**

21 **AGAINST ALL DEFENDANTS**

22 14. Plaintiff incorporates by reference and realleges as if fully stated herein the
23 material allegations set out above in the preceding paragraphs.

24 15. The above conduct was unwelcome, directed towards Plaintiff, and was part of an
25 ongoing and continuing pattern of conduct.

26 16. The above conduct caused Plaintiff to perceive her work environment as
27 intimidating, hostile, abusive or offensive.
28

1 17. Complaints and/or information about much of the harassing conduct were made to
2 Defendants, but the harassment continued. After the complaints, the harassment continued.

3 18. Plaintiff filed timely complaints against the Defendants with the DFEH alleging
4 sexual harassment, retaliation, and failure to prevent sexual harassment. Thereafter, Plaintiff
5 received from the DFEH notification of her right to sue in the Courts of the State of California,
6 the Defendants for which complaints had been filed.

7 19. Defendants' acts were malicious, oppressive or fraudulent with intent to vex,
8 injure, annoy, humiliate and embarrass Plaintiff, and in conscious disregard of the rights or
9 safety of Plaintiff and other employees of Defendants, and in furtherance of Defendants'
10 ratification of the wrongful conduct of the employees and managers of Defendants.
11 Accordingly, Plaintiff is entitled to recover punitive damages from Defendants.

12 20. By reason of the conduct of Defendants and each of them as alleged herein,
13 Plaintiff has necessarily retained attorneys to prosecute the within action. Plaintiff is therefore
14 entitled to reasonable attorney's fees and litigation expenses, including expert witness fees and
15 costs, incurred in bringing the within action.

16 21. As a result of Defendants and each of their actions, Plaintiff sustained economic
17 damages to be proven at trial.

18 22. As a direct and proximate result of said wrongful acts by Defendants, Plaintiffs
19 and each of them have suffered and will continue to suffer humiliation, shame, despair,
20 embarrassment, depression, and mental pain and anguish, all to Plaintiffs' damage in an amount
21 to be proven at time of trial.

22 23. The above harassing conduct violates Government Code §§ 12940 et seq. and
23 California public policy and entitles Plaintiff to all categories of damages, including exemplary
24 or punitive damages.

25
26 **SECOND CAUSE OF ACTION**
27 **FAILURE TO PREVENT HARASSMENT**
28 **FEHA - CAL. GOVT. CODE § 12940(j) & (k)**

AGAINST ALL DEFENDANTS

24. Plaintiff incorporates by reference and realleges as if fully stated herein the material allegations set out above in the preceding paragraphs.

25. In violation of California Government Code § 12940 et seq., Defendants, and each of them, failed to take all reasonable steps necessary to prevent sexual harassment and retaliation against employees for opposing forbidden practices.

26. In perpetrating the above-described conduct, Defendants, and each of them, engaged in a pattern, practice, policy and custom of sexual harassment. Said conduct on the part of Defendants, and each of them, constituted a policy, practice, tradition, custom and usage which denied Plaintiff protection of California Government Code § 12940 et seq.

27. At all relevant time periods, Defendants, and each of them, failed to make an adequate response and investigation into the conduct of Defendant Guillermo and the aforesaid pattern and practice, and thereby established a policy, custom, practice or usage within the organization of Defendants, which condoned, encouraged, tolerated, sanctioned, ratified, approved of, and/or acquiesced in sexual harassment by their supervising personnel towards Plaintiff and other members of the housekeeping staff.

28. At all relevant time periods there existed within the organization of Defendants, and each of them, a pattern and practice of conduct by their personnel which resulted in sexual harassment, including but not necessarily limited to, Defendant Guillermo's conduct directed at Plaintiff.

29. Defendants did not have an adequate sexual harassment policy and did not provide adequate sexual harassment prevention training with respect to its supervising personnel.

30. Defendants, and each of them, knew or reasonably should have known that the failure to provide adequate education, training, and information to their supervising personnel policies and practices regarding sexual harassment would result in sexual harassment against employees including but not limited to Plaintiff.

1 31. The failure of Defendants, and each of them, to take immediate and appropriate
2 action to stop the sexual harassment, to take all reasonable steps to prevent harassment from
3 occurring, to provide any or adequate education, training, and information to supervising
4 personnel concerning policies and practices regarding sexual harassment constituted deliberate
5 indifference to the rights of employees, including but not limited to those of Plaintiff, under
6 California Government Code § 12940 et seq.

7 32. By reason of the conduct of Defendants and each of them as alleged herein,
8 Plaintiff has necessarily retained attorneys to prosecute the within action. Plaintiff therefore is
9 entitled to reasonable attorney's fees and litigation expenses, including expert witness fees and
10 costs, incurred in bringing the within action. As a result of Defendants and each of their actions,
11 Plaintiff sustained economic damages to be proven at trial. As a further result of Defendants'
12 and each of their actions, Plaintiff suffered emotional distress; resulting in damages to be proven
13 at trial.
14

15 33. The conduct of Defendants and/or their agents/employees as described herein was
16 malicious, and/or oppressive, and done with a willful and conscious disregard for Plaintiff's
17 rights and for the deleterious consequences of Defendants' actions. Defendants and/or their
18 agents/employees or supervisors authorized, condoned and ratified the unlawful conduct of the
19 remaining Defendants. Consequently, Plaintiff is entitled to punitive damages against
20 Defendants.

21 **THIRD CAUSE OF ACTION**
22 **INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS**
23 **AGAINST ALL DEFENDANTS**

24 34. Plaintiff incorporates by reference and realleges as if fully stated herein the
25 material allegations set out above in the preceding paragraphs.

26 35. Plaintiff is informed and believes and thereon alleges that Defendants, by and
27 through its principals, agents and employees conducted themselves unlawfully in violation of
28 public policy and applicable law as described above with conscious disregard of the result or

1 outcome of such act. The unlawful harassment towards Plaintiff, due to its improper motivations
2 and surrounding circumstances, constitute extreme and outrageous conduct by the Defendants,
3 and each of them.

4 36. Through the outrageous conduct described above, Defendants acted with the
5 intent to cause, and with reckless disregard for the probability of causing Plaintiff to suffer
6 severe emotional distress.

7 37. At all relevant times, Defendants had actual or constructive knowledge of extreme
8 and outrageous conduct described herein, and condoned, ratified and participated in such
9 extreme and outrageous acts.

10 38. As a direct and proximate result of Defendants' willful, knowing and intentional
11 acts, and Defendants' failure to act, Plaintiff has suffered and will continue to suffer mental
12 distress and anguish. Plaintiff has suffered and will continue to suffer a loss of earnings, stock
13 options, and other employment benefits and job opportunities. Plaintiff is thereby entitled to
14 general and compensatory damages in amount to be proven at trial.

15 39. The acts of Defendants, as alleged herein, were done with fraud, oppression and
16 malice, with a conscious disregard for Plaintiff's rights; and with the intent, design and purpose
17 of injuring Plaintiff, with an improper and evil motive amounting to malice, in conscious
18 disregard of Plaintiff's rights. Plaintiff is therefore entitled to recover punitive damages against
19 Defendants, and each of them.

20
21 **FOURTH CAUSE OF ACTION**

22 **NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS**

23 **AGAINST ALL DEFENDANTS**

24 40. Plaintiff incorporates by reference and realleges as if fully stated herein the
25 material allegations set out above in the preceding paragraphs.

26 41. Plaintiff is informed and believes and thereon alleges that Defendants, by and
27 through its principals, agents and employees conducted themselves unlawfully in violation of
28 public policy and applicable law as described above with conscious disregard of the result or

1 outcome of such act. The unlawful harassment, retaliation, conduct towards Plaintiff, due to its
2 improper motivations and surrounding circumstances constitute extreme and outrageous conduct
3 by the Defendants, and each of them.

4 42. As a direct and proximate result of Defendants' negligent acts and conduct, and
5 Defendants' negligent failure to act, Plaintiff has suffered and will continue to suffer mental
6 distress and anguish. Plaintiff has suffered and will continue to suffer a loss of earnings, stock
7 options, and other employment benefits and job opportunities. Plaintiff is thereby entitled to
8 general and compensatory damages in amount to be proven at trial.

9 43. The acts of Defendants, as alleged herein, were done with fraud, oppression and
10 malice, with a conscious disregard for Plaintiff's rights; and with the intent, design and purpose
11 of injuring Plaintiff, with an improper and evil motive amounting to malice, in conscious
12 disregard of Plaintiff's rights. Plaintiff is therefore entitled to recover punitive damages against
13 Defendants, and each of them.

14
15 **PRAYER FOR RELIEF**

16 WHEREFORE, PLAINTIFF prays for relief as follows:

- 17 1. For general and special damages according to proof, however, no less than the
18 jurisdictional limit of this court;
19 2. For punitive damages in amounts according to proof;
20 3. For attorneys' fees as provided by law;
21 4. For prejudgment, post-judgment and other interest as provided by law;
22 5. For cost of suit incurred herein; and
23 6. For such other and further relief as the Court deems fair and just.

24 Dated: December 13, 2012

MICHAEL H. KIM, P.C.

25 

26 MICHAEL H. KIM
27 Attorney for Plaintiff
28 CINDYQIWANG XU