

FILED
Superior Court Of California,
Sacramento
Dennis Jones, Executive
Officer
12/19/2008
rcaddizk
By [Signature], Deputy
Case Number:
34-2008-00029243-CU-OE-GDS

1 **LAPLANTE, SPINELLI, DONALD & NOTT**
A PROFESSIONAL CORPORATION
2 815 S Street, 2nd Floor
Sacramento, California 95811
3 TELEPHONE (916) 448-7888 - FAX (916) 448-6888

4 John M. Laplante, Esq./SBN 088941
ATTORNEYS FOR PLAINTIFF
5 LAURA CERVANTES MYERS

6
7
8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF SACRAMENTO

10
11 LAURA CERVANTES MYERS,
12 Plaintiff,

Case No.
COMPLAINT FOR DAMAGES

13 v.

14 STATE OF CALIFORNIA, a public entity,
15 SHAWN KIM, an individual,
16 TAMMY TRAN an individual,
and DOES 1 through 10,

17 Defendants.

18
19 Plaintiff LAURA CERVANTES MYERS alleges as follows:

20 **General Allegations**

- 21 1. Plaintiff is an adult female residing in San Francisco County, California.
22 2. Plaintiff is informed and believes and on that basis alleges that the Defendant
23 State of California is and at all times relevant was a public entity organized and existing under
24 the laws of the State of California with its principal place of business being in
25 Sacramento County, California, and that it employed more than 50 persons and was an
26 employer as defined by the California Fair Employment and Housing Act (FEHA).
27 3. Plaintiff is informed and believes and on that basis alleges that the Defendant
28 Shawn Kim is and at all relevant times was an individual residing in Orange County,

1 California, and was an employee of the State of California, Defendant herein.

2 4. Plaintiff is informed and believes and on that basis alleges that Defendant
3 Tammy Tran is and at all relevant times was an individual residing in Orange County,
4 California and was an employee of the State of California.

5 5. The true names and capacities of Defendants named as DOE 1 through DOE 10,
6 inclusive, are presently unknown to Plaintiff. Plaintiff will amend this complaint setting forth
7 the true names and capacities of these factitiously named Defendants when they are
8 ascertained. Plaintiff is informed and believes and on that basis alleges that each of the
9 fictitiously named Defendants has participated in the acts alleged in this Complaint to have
10 been done by the named Defendants.

11 6. Plaintiff is informed and believes and on that basis alleges that at all relevant
12 times, each of the defendants, whether named or fictitious, was the defendant or agent of each
13 of the other defendant, and in doing the things alleged to have been done in the complaint,
14 acted within the scope and course of such agency or employment, or ratified the acts of the
15 other.

16 7. Plaintiff was hired as Administrative Assistant and District Representative for
17 State Senator Lou Correa on or about June 2007. During the course of her employment, she
18 became pregnant.

19 8. Tammy Tran was the District Director (34th District) and Plaintiff's immediate
20 supervisor.

21 9. Shawn Kim was Plaintiff's co-worker, employed as a casework manager.

22 10. During her employment, Plaintiff was subjected to multiple instances of sexually
23 harassing conduct, behavior and statements by Shawn Kim all of which was severe,
24 unwelcome, and pervasive. Shawn Kim's conduct included statements about Plaintiff's
25 appearance, her pregnancy, profane and derogatory statements such as "stupid f---ing bitch"
26 and unwanted touching. Kim ignored Plaintiff's demands that he stop his inappropriate
27 behavior. Kim's actions detrimentally affected the Plaintiff's ability to accomplish her job
28 duties.

1 11. Plaintiff complained to her supervisor Tran about Kim and his conduct, but Tran
2 failed to address the complaints and ignored them altogether telling Plaintiff that it was “just
3 Shawn being Shawn.” Even though she was aware of prior complaints of inappropriate sexual
4 harassment behavior by Kim, Tran took no action. Instead, Tran complained to Plaintiff about
5 Plaintiff’s pregnancy and that it was interfering with Plaintiff’s work obligations.

6 12. After Plaintiff complained about Kim’s sexual harassment, she was subjected to
7 retaliatory treatment which included increased work assignments, office reassignments, special
8 restrictions which were not previously in place, and unwarranted criticisms regarding work
9 performance.

10 13. Plaintiff was placed on emergency medical leave in November 2007 due to
11 complications with her pregnancy and stress associated with her employment. Plaintiff was off
12 work until medically released on or about January 5, 2008.

13 14. On or about November 2, 2007 Plaintiff sent an email to management and
14 Senator Correa outlining the conduct that had taken place. Dina Hidalgo, Senate Director of
15 Personnel, then met with and told Plaintiff that she was aware of prior similar complaints
16 involving Kim, and Tran’s prior failures to take appropriate action. Hidalgo told Plaintiff she
17 would investigate the matter. In subsequent conversations, Hidalgo assured Plaintiff that she
18 would not have to work with Kim and Tran when she returned from her medical leave.

19 15. Plaintiff filed her claim with the Department of Fair Employment and Housing
20 on January 4, 2008.

21 16. Upon her return from medical leave, Plaintiff was advised that no action would
22 be taken against either Tran or Kim, and that any corrective action that needed to be taken had
23 been accomplished. Dina Hidalgo further advised that notwithstanding the findings of her
24 “complete investigation,” no action would be taken against either Tran or Kim. Plaintiff
25 alleges that the claim she filed with the DFEH was a retaliatory motivating factor in the refusal
26 to take action against Tran or Kim.

27 17. Upon learning that she would be required to return to her employment working
28 with Tran and Kim, and that no action would be taken to address her complaints, Plaintiff was

1 forced to resign from her position rather than be further exposed to physical and psychological
2 harm as a result of the sexual harassment and hostile work environment which was tolerated in
3 the workplace.

4 18. While employed by the State Senate, Plaintiff did not receive compensation or
5 benefits as required by law, and was denied her meal time, rest periods and she was not paid
6 overtime as required by law.

7 19. As a result of the acts described, Defendants caused physical and psychological
8 injury, loss, harm and damage to Plaintiff, including, but not limited to, humiliation, distress,
9 pain and suffering, requiring her to seek medical care for which she incurred economic and
10 non-economic damages in an amount in excess of the jurisdictional limit of this Court but will
11 be proven at trial.

12 20. Further, as a result of the acts described, Defendants caused Plaintiff to lose
13 wages and benefits to which she would have been entitled but for their conduct.

14 21. Further, as a result of the acts described, Defendants have caused Plaintiff to
15 suffer economic and non-economic losses in the future which are reasonably probable as a
16 result of the filing of this action; said damages being the product of reduced employment
17 opportunities and negative references, either express or implied that are likely to occur and
18 have occurred due to the stigma of having filed an action against Defendants, and each of them.

19 22. Plaintiff filed a complaint with the DFEH on January 4, 2008 and an amended
20 complaint on or about October 21, 2008. A right to sue letter was issued by DFEH on or about
21 January 7, 2008.

22 **FIRST CAUSE OF ACTION**

23 (Sexual Harassment -- against Defendants Kim, Tran and Does 1 - 10)

24 23. Plaintiff incorporates each allegation set forth herein in paragraphs 1 through 22
25 above, as though fully set forth herein.

26 24. By the acts and conduct described herein above, Defendants Kim and Tran not
27 only violated California State's Senate Zero Tolerance Policy for sexual harassment, but also
28 the provisions of FEHA prohibiting unlawful discrimination based on Plaintiff's sex, including

1 but not limited to Government Code section 12940(j).

2 **SECOND CAUSE OF ACTION**

3 (Failure to Prevent Sexual Harassment -- against Defendant State of California)

4 25. Plaintiff incorporates by reference all previous allegations as set forth in
5 paragraphs 1 through 24 set forth above, as though fully set forth herein.

6 26. By the acts herein above described, Defendant State of California not only
7 violated its zero tolerance policy, but also FEHA as set forth in Government Code section
8 12940(j).

9 **THIRD CAUSE OF ACTION**

10 (Retaliation -- against Defendants Tran, State of California and Does 1-10)

11 27. Plaintiff incorporates herein by reference each and every allegations et forth in
12 paragraphs 1 through 26 above, as though fully set forth herein.

13 28. Plaintiff's complaints as described above, were at all times protected by law, but
14 notwithstanding this, Defendants Tran and the State of California knowingly failed to protect
15 Plaintiff and instead took action against her for complaining about work place harassment and
16 the discrimination that she experienced.

17 **FOURTH CAUSE OF ACTION**

18 (Constructive Termination -- against Defendant State of California)

19 29. Plaintiff incorporates herein by reference each and every allegation set forth in
20 paragraphs 1 through 28 above, as though fully set forth herein.

21 30. By virtue of the Defendants' knowing refusal and failure to address Plaintiff's
22 complaints regarding the aggravated, intolerable and hostile working environment,
23 discrimination and tolerance of the same, Plaintiff was compelled to resign her employment
24 rather than risk aggravated, continued or new harm, injury or damage to her health and well-
25 being that was reasonably certain to follow if she were to return to the work place and resume
26 her normal duties.

27 31. As a result of the Defendants' actions and/or inactions, Plaintiff has suffered
28 injuries, damage, loss or harm in excess of the jurisdictional limits of this Court and is subject

1 to proof at the time of trial.

2 **FIFTH CAUSE OF ACTION**

3 (Disability Discrimination -- against Defendants Kim, Tran, State of California, Does 1-10)

4 32. Plaintiff incorporates herein by reference each and every allegation set forth in
5 paragraphs 1 through 31 above, as though fully set forth herein.

6 33. Actions of the Defendants, and each of them, with respect to pregnancy disability
7 violated Government Code section 12945, California Pregnancy Disability Leave Law, and the
8 so-called Zero Tolerance Policy endorsed by the Defendant State of California.

9 34. As a result of the Defendants' actions, Plaintiff was denied her right to return to
10 her original employment position, thereby causing her to suffer economic and non-economic
11 damages in excess of the jurisdictional minimum of this Court.

12 **SIXTH CAUSE OF ACTION**

13 (Wage and Hour Violations -- against Defendant State of California)

14 35. Plaintiff incorporates herein by reference each and every allegation set forth in
15 paragraphs 1 through 34 above, as though fully set forth herein.

16 36. Plaintiff was required by Defendants to work beyond mandates of statutory
17 requirements for meal time and overtime in violation of federal and state law applicable
18 regulations and orders. Plaintiff was also denied rest time and other rights guaranteed to her by
19 law.

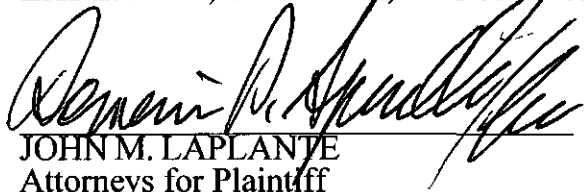
20 37. As a result of these violations, Plaintiff sustained damages in an amount set forth
21 by law, including penalties under the Labor Code and applicable regulations.

22 WHEREFORE, Plaintiff prays for judgment as follows:

- 23 1. For compensatory damages according to proof and prejudgment interest thereon
24 to the extent allowable by law;
- 25 2. For attorney's fees on the First, Second, Third, Fourth, Fifth and Sixth Causes of
26 Action;
- 27 3. For costs of suit; and
- 28 4. For such other and further relief as the Court may deem just and proper.

1 DATED: December 19, 2008

LAPLANTE, SPINELLI, DONALD & NOTT

2
3
4 By: 
5 JOHN M. LAPLANTE
6 Attorneys for Plaintiff
7 LAURA CERVANTES MYERS

8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28