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prasadb2
By _____, Deputy
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9 **SUPERIOR COURT OF CALIFORNIA**
10 **FOR THE COUNTY OF SACRAMENTO**

11
12 KENNETH HOM, individually and as an)
13 aggrieved employee pursuant to the)
14 Private Attorneys General Act (PAGA),)

15 Plaintiff,)

16 vs.)

17
18 KINGS CASINO MANAGEMENT)
19 CORP.; DOES 1 to 20, inclusive,)

20 Defendants)
21)
22)
23)
24)
25)
26)
27)
28)

Case No.

COMPLAINT FOR DAMAGES

1. Retaliation in Violation of Labor Code § 1102.5;
2. Racial Harassment in Violation of FEHA;
3. Failure to Take All Reasonable Steps to Prevent Racial Harassment in Violation of FEHA;
4. Sexual Harassment in Violation of Cal. Gov't Code § 12940(a) & (j)
5. Failure to Take All Reasonable Steps to Prevent Sexual Harassment in Violation of Cal. Gov't Code § 12940(k);
6. Retaliation in Violation of Cal. Gov't Code § 12940(h);
7. Violation of California Unfair Competition Law (Business & Professions Code § 17200 et seq.
8. Civil Penalties Pursuant to Private Attorney General Act, Labor Code § 2698 et seq.

1 Plaintiff KENNETH HOM ("Plaintiff") hereby files this Complaint against Defendant
2 KINGS CASINO MANAGEMENT CORP., and DOES 1 to 20, inclusive, (hereinafter
3 collectively referred to as "Defendants"). Plaintiff alleges the following:

4 **PARTIES AND JURISDICTION**

5 1. This is an enforcement action under the Labor Code Private Attorneys General Act of
6 2004 ("PAGA"), California Labor Code section 2698, *et seq.* to recover civil penalties and any other
7 available relief on behalf of Plaintiff, the State of California, and other current and former employees
8 who worked for Defendants in California and who suffered at least one violation of the Labor Code
9 as set forth in this complaint, at any time between June 30, 2022, and judgement.

10 2. Plaintiff KENNETH HOM is an individual over the age of eighteen (18) and is now
11 and/or at all times mentioned in this Complaint was a resident of the State of California.

12 3. Plaintiff was an employee of Defendants, providing services as a game attendant and shift
13 manager at Defendant's casino in Sacramento County, California.

14 4. Plaintiff is informed and believes, and thereon alleges, that Defendant KINGS CASINO
15 MANAGEMENT CORP. is California Corporation with its principal place of business in La Jolla,
16 California, and is licensed to and actually doing business in California.

17 5. Plaintiff is further informed and believes, and thereon alleges, that each of the Defendants
18 herein was, at all times relevant to this action, the agent, employee, or joint employer or joint
19 venturer of the remaining defendants and was acting within the course and scope of that relationship.
20 Plaintiff is further informed and believes, and thereon alleges, that each of the Defendants herein
21 gave consent to, ratified and authorized the acts alleged herein to each of the remaining defendants.
22 The true names and capacities of the defendants named herein Does 1 through 20, inclusive, whether
23 individual, corporate, associate, or otherwise are unknown to Plaintiff, who therefore sues such
24 defendants by fictitious names pursuant to California Code of Civil Procedure section 474. Plaintiff
25 will amend this complaint to show such true names and capacities of Does 1 through 20, inclusive,
26 when they have been determined.

1 6. The Sacramento County Superior Court has jurisdiction in this matter under the
2 California Constitution, Article VI, section 10. The statute under which this action is brought does
3 not specify any other basis for jurisdiction.

4 7. Venue is proper pursuant to Civil Procedure Code §§ 395(a) and 395.5, in that some of
5 the wrongful acts and violations of law asserted herein occurred within Sacramento County.

6 8. On June 30, 2023, Plaintiff filed his Labor Code § 2699.3 Private Attorney General Act
7 (“PAGA”) notice with the California Labor & Workforce Development Agency (“LWDA”). After
8 the expiration of 65 days from the filing of the PAGA Notice, if the LWDA does not respond,
9 Plaintiff will have fully exhausted his administrative remedies.

10 9. Plaintiff has filed a complaint of discrimination with the State of California Department
11 of Fair Employment and Housing against Defendant KINGS CASINO MANAGEMENT CORP..
12 within the applicable statutory period and received a Notice of Right to Sue on June 30, 2023.

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

14 10. Plaintiff and similarly situated employees worked for Defendant as both exempt and non-
15 exempt employees in California. Plaintiff brings his representative PAGA claims on behalf of all
16 exempt and non-exempt employees of Defendant in California who suffered one or more of the
17 Labor Code violations identified herein.

18 11. Plaintiff worked for Defendant as a game attendant and shift manager from
19 approximately February, 2021, until his illegal and retaliatory termination in or around March 27,
20 2023.

21 12. During the relevant period, Defendant did not reimburse Plaintiff and similarly situated
22 employees for cell phone usage for business purposes. Plaintiff and similarly situated employees
23 used their cell phones for business purposes on a regular basis and were not reimbursed by
24 Defendant.

25 13. In addition, Defendant did not allow Plaintiff and similarly situated employees to take
26 their statutorily required meal periods. Defendant failed to provide Plaintiff and other similarly
27 situated employees a 30-minute, duty-free meal period before the end of the fifth hour of work as
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1 required under the law. Plaintiff and similarly situated employees regularly missed their meal
2 periods and/ or they were provided late due to the workload and duties they were required to
3 perform.

4 14. Defendant also failed to provide rest periods to Plaintiff and similarly situated employees
5 for every 4 hours worked or major fraction thereof. Management has failed to take action to ensure
6 meal and rest periods were able to be taken by Plaintiff and similarly situated employees. When
7 Defendant required Plaintiff and similarly situated employees to work through their meal and/or rest
8 periods, Defendant failed to pay Plaintiff and similarly situated employees all statutorily required
9 meal and rest period premiums owed.

10 15. Plaintiff is informed and believes that Defendant committed other violations of the
11 California Labor Code, including but not limited to those identified in this complaint. Pursuant to
12 *Huff v. Securitas Sec. Servs. USA, Inc.*, 23 Cal. App. 5th 745 (2018), Plaintiff intends to seek civil
13 penalties for all violations of the California Labor Code committed by Defendant against Plaintiff
14 and other similarly situated employees, both exempt and non-exempt, whether he experienced them
15 personally or not.

16 16. In addition, on or around March 27, 2023, Plaintiff was informed that his employment
17 was being terminated by Defendant.

18 17. During Plaintiff's employment, he made a number of complaints to his managers and to
19 Defendant's Human Resources Department regarding harassment that occurred in the workplace.
20 These complaints included concerns regarding sexual harassment and sexually inappropriate
21 conversations and conduct by other employees, and concerns of racial harassment being directed
22 toward Plaintiff by other employees.

23 18. During Plaintiff's employment, he was made aware that a group of female employees,
24 including the Human Resources Director, Human Resources Specialist, Office Tech, Accounting
25 Specialist, and Payroll Specialist, had made lewd comments about Plaintiff's and another male
26 employee's penis sizes during lunch at the workplace.
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1 19. These employees had stated that Plaintiff's penis was smaller than the other male
2 employee's penis. Plaintiff is Asian, and the other male employee they discussed was black.

3 20. Plaintiff complained to his manager about this behavior, which was especially heinous
4 given the involvement of Defendant's Human Resources staff. Rather than investigate plaintiff's
5 concerns, Plaintiff's manager simply told him to let it go.

6 21. Another employee also complained to management about the same behavior of this group
7 of employees, and they were told the same thing by management: let it go.

8 22. Plaintiff was also subjected to other negative comments regarding Asians while he was
9 employed with Defendant.

10 23. A few weeks after Plaintiff complained to his manager about racial and sexual
11 harassment, he was suspended and then terminated by Defendant. Defendant used the excuse of a
12 minor mistake in a cash disbursement to a host as the pretext for his termination. Other employees
13 have committed similar and worse infractions and have not been terminated. Defendant believes and
14 on that basis alleges that he was terminated for reporting the racial and sexually harassing comments
15 made by the Human Resources Director and other staff members to his manager.
16

17 24. Defendant's actions of suspending and then terminating Plaintiff after he made his
18 complaints show a clear intent to retaliate against Plaintiff for making good-faith complaints to his
19 superiors.

20 25. Upon information and belief, all transactions regarding hiring, terminations, promotions,
21 pay increases, etc. relating to Defendant's California employees were submitted to and processed by
22 Defendant's HR department in its corporate headquarters. Additionally, on information and belief,
23 Defendants' corporate records, in particular HR and pay records pertaining to Defendants' California
24 employees, are also maintained at Defendant's corporate headquarters.

25 26. Upon information and belief, Defendant maintains a central Payroll department at its
26 corporate headquarters, which processes payroll for all Defendant's employees, including Plaintiff
27 and similarly situated, aggrieved employees.
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27. At all times herein set forth, PAGA provides that any provision of law under the Labor Code and applicable IWC Wage Order that provides for a civil penalty to be assessed and collected by the LWDA for violations of the California Labor Code and applicable IWC Wage Order may, as an alternative, be recovered by aggrieved employees in a civil action brought on behalf of themselves and other current or former employees pursuant to procedures outlined in California Labor Code section 2699.3.

28. PAGA defines an aggrieved employee in Labor Code section 2699(c) as “any person who was employed by the alleged violator and against whom one or more of the alleged violation was committed.”

29. Plaintiff and other current and former employees of Defendant are aggrieved employees as defined by the Labor Code in that they are all Defendants' current or former employees and one or more of the alleged violations was committed against them.

FIRST CAUSE OF ACTION

Retaliation in Violation of Labor Code Section 1102.5

30. Plaintiff hereby incorporates by reference Paragraphs 1 through 29 of this Complaint as if fully set forth herein and for a cause of action alleges as follows:

31. California Labor Code § 1102.5(b) prohibits retaliation against an employee for disclosing information to a government or law enforcement agency or to a person with authority over the employee, where the employee has reasonable cause to believe that the information discloses a violation of state or federal statute or a violation or noncompliance with a state or federal rule or regulation. Labor Code § 1102.5 further prohibits retaliation against an employee for refusing to participate in an activity that would result in a violation of state or federal statute or a violation or noncompliance with a state or federal rule or regulation.

32. Plaintiff informed his Manager of his concerns regarding illegal harassment.

33. Plaintiff reasonably believed these actions constituted violations of the law, including the Fair Employment and Housing Act.

1 34. Following Plaintiff's complaint, Defendant retaliated against Plaintiff by suspending him
2 and then terminating his employment.

3 35. As a direct, foreseeable, and proximate result of Defendant's retaliatory actions, Plaintiff
4 has suffered and continues to suffer substantial losses in earnings and job benefits, all to his damage
5 herein in an amount not less than the minimal jurisdiction amount of this court, the amount of which
6 will be established at trial.

7 36. As a direct, foreseeable, and proximate result of Defendant's unlawful actions, Plaintiff
8 has suffered emotional distress, humiliation, shame, and embarrassment, all to the Plaintiff's damage
9 in an amount to be established at trial.

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11 **SECOND CAUSE OF ACTION**
12 **Race-Based Harassment in Violation of Cal. Gov't Code § 12900 *et seq.***

13 37. Plaintiff hereby incorporates by reference Paragraphs 1 through 36 of this Complaint as if
14 fully set forth herein, and for a cause of action alleges as follows:

15 38. At all times herein mentioned, California's Fair Employment and Housing Act
16 ("FEHA"), Cal. Gov't Code §§ 12900, *et seq.*, was in full force and effect and was fully binding
17 upon Defendants. Specifically, § 12940 prohibits an employer from harassing an employee on the
18 basis of his race.

19 39. Plaintiff is Asian and thus a member of a protected class.

20 40. The actions described above toward Plaintiff created a hostile environment which
21 materially altered Plaintiff's working conditions and which constitutes unlawful harassment.

22 41. As a direct, foreseeable and proximate result of Defendant's unlawful actions, Plaintiff
23 has suffered damages including lost wages, benefits, emotional distress, humiliation, shame, and
24 embarrassment, in an amount to be proven at the time of trial.

25 42. Defendant committed the acts herein despicably, maliciously, fraudulently, and
26 oppressively, with the wrongful intention of injuring Plaintiff, from an improper and evil motive
27 amounting to malice, and in conscious disregard of the rights and safety of plaintiff and others.
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1 Plaintiff is thus entitled to recover punitive damages from Defendants in an amount according to
2 proof.

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4 **THIRD CAUSE OF ACTION**

5 **Failure to Prevent Race-Based Discrimination and Harassment in Violation of FEHA**

6 43. Plaintiff hereby incorporates by reference Paragraphs 1 through 42 of this Complaint as if
7 fully set forth herein and for a cause of action alleges as follows:

8 44. At all times herein mentioned, California's Fair Employment and Housing Act
9 ("FEHA"), Cal. Gov't Code §§ 12900, *et seq.*, was in full force and effect and was fully binding
10 upon Defendants. Specifically, § 12940(k) makes it an unlawful employment practice for an
11 employer to fail to take all reasonable steps necessary to prevent unlawful harassment,
12 discrimination, and retaliation from occurring in the workplace.

13 45. As described above, Plaintiff complained about the harassing and discriminatory
14 behavior he and other employees were subjected to, but Defendant did nothing in response other
15 than retaliating against Plaintiff. Defendant failed to investigate Plaintiff's claims, failed to take all
16 reasonable steps to prevent employees harassing Plaintiff, and did not properly investigate or
17 promptly discipline those involved in response to Plaintiff's complaint. Defendant's management
18 failed to take all reasonable steps necessary to prevent harassment from occurring in violation of
19 § 12940(k).

20 **FOURTH CAUSE OF ACTION**

21 **Sex Harassment in Violation of Cal. Gov't Code § 12940(a) & (i)**

22 46. Plaintiff hereby incorporates by reference Paragraphs 1 through 45 of this Complaint as if
23 fully set forth herein, and for a cause of action alleges as follows:

24 47. At all times herein mentioned, California's Fair Employment and Housing Act
25 ("FEHA"), Cal. Gov't Code §§ 12900, *et seq.*, was in full force and effect and was fully binding
26 upon Defendants. Specifically, §§ 12940(j) prohibits an employer from sexually harassing an
27 employee on the basis of his sex.
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1 48. The actions of Defendant's employees toward Plaintiff, as described herein, created a
2 hostile sexual environment which materially altered Plaintiff's working conditions, and which
3 constitutes sexual harassment in violation of Gov't Code § 12940(j)(1).

4 49. As described above, Defendant's employees, including the Human Resources Director
5 and other administrative employees engaged in lewd and harassing behavior regarding Plaintiff and
6 another male employee.

7 50. As a direct, foreseeable and proximate result of Defendants' unlawful actions, Plaintiff
8 has suffered economic damages including loss of back pay, front pay, benefits and other
9 compensation.

10 51. As a direct, foreseeable, and proximate result of Defendants' unlawful actions, Plaintiff
11 has suffered emotional distress, humiliation, shame, and embarrassment, all to the Plaintiff's damage
12 in an amount to be proven at the time of trial.

13 52. Defendant committed the acts herein despicably, maliciously, fraudulently, and
14 oppressively, with the wrongful intention of injuring Plaintiff, from an improper and evil motive
15 amounting to malice, and in conscious disregard of the rights and safety of plaintiff and others.
16 Plaintiff is thus entitled to recover punitive damages from Defendant in an amount according to
17 proof.

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19 **FIFTH CAUSE OF ACTION**
20 **Failure to Prevent Sexual Harassment in Violation of FEHA**

21 53. Plaintiff hereby incorporates by reference Paragraphs 1 through 52 of this Complaint as if
22 fully set forth herein and for a cause of action alleges as follows:

23 54. At all times herein mentioned, FEHA was in full force and effect and was fully binding
24 upon Defendants. Specifically, § 12940(k) makes it an unlawful employment practice for an
25 employer to fail to take all reasonable steps necessary to prevent sexual harassment from occurring.

26 55. As described above, Defendant's management failed to take all reasonable steps
27 necessary to prevent harassment from occurring in violation of § 12940(k).
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56. As a direct, foreseeable and proximate result of Defendant's unlawful actions, Plaintiff has suffered and continues to suffer losses in earnings and other employment benefits and has incurred other economic losses.

57. As a direct, foreseeable, and proximate result of Defendants' unlawful actions, Plaintiff has suffered substantial emotional distress, humiliation, shame, and embarrassment, all to Plaintiff's damage in an amount to be proven at the time of trial.

58. Defendants committed the acts herein despicably, maliciously, fraudulently, and oppressively, with the wrongful intention of injuring Plaintiff, from an improper and evil motive amounting to malice, and in conscious disregard of the rights and safety of Plaintiff and others. Plaintiff is thus entitled to recover punitive damages from Defendants in an amount according to proof.

SIXTH CAUSE OF ACTION

Retaliation in Violation of Cal. Gov't Code § 12940(h)

59. Plaintiff hereby incorporates by reference Paragraphs 1 through 58 of this Complaint as if fully set forth herein, and for a cause of action alleges as follows:

60. At all times herein mentioned, California's Fair Employment and Housing Act ("FEHA"), Cal. Gov't Code §§ 12900, et seq., was in full force and effect and was fully binding upon Defendants. Specifically, § 12940(h) makes it an unlawful employment practice for an employer to discriminate against any person because the person has opposed any practices forbidden under the statute.

61. Plaintiff opposed the harassing and discriminatory behavior of Garrity to Defendants' management. In response to his complaints, Defendants retaliated against Plaintiff by terminating his employment.

62. As a direct, foreseeable and proximate result of Defendants' unlawful actions, Plaintiff has suffered and continues to suffer losses in earnings and other employment benefits and has incurred other economic losses.

63. As a direct, foreseeable, and proximate result of Defendants' unlawful actions, Plaintiff has suffered substantial emotional distress, humiliation, shame, and embarrassment, all to the Plaintiff's damage in an amount to be proven at the time of trial.

64. Defendants committed the acts herein despicably, maliciously, fraudulently, and oppressively, with the wrongful intention of injuring Plaintiff, from an improper and evil motive amounting to malice, and in conscious disregard of the rights and safety of Plaintiff and others. Plaintiff is thus entitled to recover punitive damages from Defendants in an amount according to proof.

SEVENTH CAUSE OF ACTION

Unfair Competition

65. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 64 as though fully set forth herein.

66. Unfair competition shall mean and include any unlawful, unfair or fraudulent business act or practice and unfair, deceptive, untrue or misleading advertising and any act prohibited by Chapter 1 (commencing with Section 17500) of Part 3 of Division 7 of the Business and Professions Code.

See Cal. Bus. and Prof. Code §§ 17200 et seq.

67. Defendant committed numerous violations of the California Labor Code throughout the employment relationship.

68. Plaintiff is also informed and believes and thereon alleges that such actions and/or conduct constitute a violation of the California Unfair Competition Law (“UCL”) (Business and Professions Code section 17200 *et seq.*) pursuant to *Cortez v. Purolator Air Filtration Products Co.*, 23 Cal. 4th 163 (2000).

69. As a direct and legal result of Defendant's conduct, as alleged herein, pursuant to the UCL (including B&P Code §17203), Plaintiff and similarly situated employees are entitled to restitution as a result of its unfair business practices, including, but not limited to, public injunctive relief, pursuant to B&P Code § 17203, and interest and penalties pursuant to B&P §§ 17203, 17208.

1 violations of Labor Code §§ 1194, 226, and 226.7, all in an amount as yet unascertained but subject
2 to proof at trial, for four (4) years from the filing of this Action.

3 **EIGHTH CAUSE OF ACTION**

4 **CIVIL PENALTIES PURSUANT TO PAGA § 2698 ET SEQ.**

5 70. Plaintiff incorporates by reference and re-alleges paragraphs 1-69 above as though fully
6 set forth herein.

7 71. Plaintiff brings this cause of action as a proxy for the State of California and in this
8 capacity, seeks penalties on behalf of all Aggrieved Employees for Defendant's violations of the
9 California Labor Code, including but not necessarily limited to, those Labor Code and Wage Order
10 violations identified above.

11 72. On June 30, 2023, Plaintiff, through counsel, sent written notice to the LWDA regarding
12 Defendant's violations of the California Labor Code, pursuant to Labor Code section 2698, *et seq.*,
13 PAGA. After the expiration of 65 days from the filing of the PAGA Notice, if the LWDA does not
14 respond, Plaintiff will have fully exhausted her administrative remedies.

15 73. Plaintiff is thus entitled to recover civil penalties on behalf of the State of California and
16 all aggrieved employees for all violations of the Labor Code from June 30, 2022, through trial on
17 this matter.

18 74. Defendants' conduct, as alleged herein, violated various sections of the California labor
19 Code, including but not limited to, the following:

20 75. Labor Code section 226.7 and IWC Wage Order No. 4-2001, section 11(A) require
21 employers to provide employees meal periods of thirty (30) minutes per five (5) hours worked. For
22 the reasons stated above, Plaintiff and similarly situated employees were not authorized and
23 permitted to take legally compliant meal periods pursuant to California law. Defendant also failed to
24 pay missed period premiums for their failure to provide meal periods.

25 76. Labor Code section 226.7 and IWC Wage Order No. 5-2001, section 12(A) require
26 employers to provide employees paid off-duty rest periods of ten (10) minutes per four (4) hours or
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1 major fraction thereof worked. For the reasons stated above, Plaintiff and similarly situated
2 employees were not authorized and permitted to take legally compliant rest periods pursuant to
3 California law in violation of the Labor Code. Defendant also failed to pay missed rest period
4 premiums for their failure to provide rest periods.

5 77. Labor Code section 2802(a) states that "An employer shall indemnify his or her
6 employee for all necessary expenditures or losses incurred by the employee in direct consequence of
7 the discharge of his or her duties, or of his or her obedience to the directions of the employer, even
8 though unlawful, unless the employee, at the time of obeying the directions, believed them to be
9 unlawful." For the reasons stated above, Defendant failed to pay required reimbursements to
10 Plaintiff and similarly situated employees for required business expenses in violation of the Labor
11 Code.

12 78. Pursuant to *Huff v. Securitas Sec. Servs. USA, Inc.*, 23 Cal. App. 5th 745, 761, 233 Cal.
13 Rptr. 3d 502, 513 (2018), Plaintiff seeks civil penalties on behalf of the State of California and all
14 aggrieved employees for all violations of the California Labor Code, whether he experienced them
15 personally or not.
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17 DAMAGES

18 WHEREFORE, Plaintiff prays for judgment against Defendant as follows:

- 19 1. A jury trial;
- 20 2. For penalties and liquidated damages under the California Labor Code according to
21 proof allowed by law;
- 22 3. For compensatory damages, including, but not limited to, unpaid wages, plus
23 interest, according to proof allowed by law;
- 24 4. For an award to Plaintiff of costs of suit incurred herein and reasonable attorney's
25 fees;
- 26 5. For injunctive relief;
- 27 6. For an award of prejudgment and post-judgment interest; and
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1 7. For an award to Plaintiff of such other and further relief as the Court deems just and
2 proper.
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4 Dated: June 30, 2023

Castle Law: California Employment Counsel, PC

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6 By: 
7 Timothy B. Del Castillo
8 Kent L. Bradbury
 Attorneys for Plaintiff KENNETH HOM