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January 12, 2018

**VIA ONLINE FILING**

David M. Lanier, Secretary  
California Labor and Workforce Development Agency

**Re: Labor Code Private Attorney General Act of 2004 – Notice on behalf of Dawn Knepper**

Dear Secretary Lanier:

This letter provides notice on behalf of Dawn Knepper (“Plaintiff”) and similarly situated, aggrieved employees pursuant to the Private Attorney General Act of 2004, Cal. Lab. Code § 2699.3. We request that the Labor and Workforce Development Agency (“LWDA”) investigate past and ongoing violations of Labor Code, including, without limitation, Sections 98.6, 204, 204c, 204.2 221, 223, 226, 1102.5, and 1197.5 at Ogletree, Deakins, Nash, Smoak & Stewart, P.C., and, as appropriate, any of its parent companies, subsidiaries, or affiliates (collectively, “Ogletree” or the “Firm”). We also request that the LWDA provide notice to Plaintiff through her undersigned counsel if it chooses not to investigate the allegations.

**Plaintiff Dawn Knepper**

Plaintiff Dawn Knepper is a female attorney and non-equity shareholder in Ogletree’s Orange County office. Plaintiff Knepper has been employed by Ogletree since June 2005.

Ms. Knepper is an aggrieved employee who has suffered and continues to suffer the Labor Code violations alleged herein.

**Unequal Pay (Cal. Lab. Code § 1197.5(a))<sup>1</sup>**

Ogletree violated and continues to violate the California Equal Pay Act by, inter alia, paying female attorneys, including but not limited to Plaintiff, less than it pays male attorneys in for substantially similar work, when viewed as a composite of skill, effort, and responsibility, and performed under similar working conditions. The unequal compensation is not made pursuant to a seniority system, a merit system, a system which measures earnings by quantity or quality of production, or a differential based on any *bona fide* factor other than sex, such as education, training, or experience. To the extent Ogletree cites certain factors other than sex, there is no

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<sup>1</sup> Aggrieved employees are entitled to recover penalties for these violations under Labor Code Section 210.

business necessity for using those factors to justify the unequal compensation, alternatively, Ogletree did not apply such factors reasonably, and, alternatively, those factors do not account for the entirety of the wage differential. Ogletree engaged and continues to engage in these violations willfully and intentionally.

#### Ogletree's Male-Dominated Hierarchy

Men dominate Ogletree's leadership and management. Women hold only two of nine seats on Ogletree's Board of Directors and two of six Firm Officer positions; one of these two officer positions was added as recently as December 2017. Compensation decisions at Ogletree are centrally controlled by its Compensation Committee, which is comprised predominantly of male members. Compensation is then voted on by Ogletree's equity shareholders, 80% of whom are men.

Ogletree discriminates against women by permitting its predominantly male leadership to favor men overtly in pay, promotions, and other opportunities regardless of their qualifications and to otherwise discriminate against women. Women hold fewer than 20% of equity shareholder positions, and fewer than 42% of non-equity shareholder positions. Ogletree leadership fosters or condones a Firm culture that marginalizes, demeans, and undervalues women.

Upon information and belief, the overrepresentation of men in Ogletree's leadership is both the source and product of continuing systemic discrimination against female shareholders.

Upon information and belief, Ogletree's leadership is aware of the Firm's inequitable pay, promotion, and job assignment practices, but have taken no steps to remedy the root causes of the disparity. Ogletree is aware of the demographics of its workforce, including the underrepresentation of women in different levels and functions.

Ogletree, one of the nation's largest employment law firms, regularly advises companies on how to comply with pay equity laws and to avoid, investigate, and remedy discrimination claims. Upon information and belief, Ogletree has been aware of its own misconduct for years but the Firm has failed to rectify the discrimination and actively sought to avoid the changes necessary to comply with the law.

Ogletree discriminates against Plaintiff and female shareholders with respect to compensation and promotions through the use of common policies and procedures.

#### Equity and Non-Equity Shareholder Policies

Ogletree's shareholders are divided into two groups: equity shareholders and non-equity shareholders. The Firm uses the equity and non-equity tiers to distribute compensation. These tiers allow predominately male attorneys to rely on arbitrary, subjective criteria to deny female shareholders promotions, equity status, pay, and compensation commensurate with their skill, experience, and contributions to the Firm.

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In order to be brought into the Firm at or promoted to shareholder level, attorneys must be recommended by Ogletree's predominantly male Board of Directors and local shareholders, then receive 75% of Ogletree's equity shareholders' votes. Ogletree's equity shareholders are 82% men.

This male-dominated system makes it extremely difficult for female non-equity shareholders to be promoted and paid at the same levels as equity shareholders, although they perform substantially similar work. Indeed, Ogletree's equity and non-equity positions are identical except for the pay and power the Firm gives them.

Ogletree's Equity and Non-Equity Shareholders policy explains that, "Expectations for both Equity and Non-Equity shareholders are the same with regard to technical and professional qualifications, experience, personal effort, managing and developing associates and staff, and contributions to the Firm as a whole." However, Ogletree pays its predominantly-male equity shareholders monthly profit-sharing distributions which can increase their target compensation by approximately up to 40%.

Ogletree routinely refuses to promote qualified female non-equity shareholders to equity shareholder status, even when they generate business that meets or exceeds the criteria and expectations for equity shareholders. At the same time, the Firm has eased business generation requirements in order to promote favored male attorneys to equity status. These policies disparately impact Ogletree's female non-equity shareholders.

### Common Credit Allocation and Compensation Policies

Compensation decisions at Ogletree are centrally controlled by its Compensation Committee, which until recently had no more than one woman among its five members. The Compensation Committee for 2018 compensation now, for the first time, has two women on it; since 2013 only a single female sat on the Compensation Committee—before that year, the Compensation Committee was comprised solely of men.

In the compensation-setting process, Ogletree's shareholders receive credit for their work in five main categories: originating credits, managing credits, responsible credits, working credits, and billable hours. Ogletree's Origination Credit Principles policy states that "The originating, managing, responsible and working attorney statistics should be utilized as a source of objective information for the Compensation Committee to make *subjective* judgments about shareholder compensation. *A formula is strongly disfavored.*" (emphases added). This subjectivity allows the Firm's male leadership to control all compensation at the Firm and results in discrimination against female attorneys. On average, Ogletree currently pays its male shareholders approximately \$110,000 more than its female shareholders, in target compensation and bonus alone.

Ogletree defines an *originating attorney* as "The attorney(s) bringing the client to the Firm for legal representation. In some cases, origination credit for a matter may be divided among several attorneys." In practice, whichever attorney establishes the Firm's initial relationship with a potential client is thereafter considered the originating attorney for all of that client's business over the entire course of the client's relationship with the Firm. The originating attorney has total

discretion to allocate origination credits in perpetuity. Only once an attorney seeks redress to the appeals process can the Firm's Managing Shareholder overturn the originating attorney's decision. In practice, the Firm's Managing Shareholder rubber stamps the allocations made by predominantly male originating attorneys. Male attorneys, who disproportionately control decision-making authority, disproportionately assign origination credits to other male attorneys. This allows male attorneys to receive an inordinate number of origination credits and allocate other credits to male attorneys even when female attorneys bring the relevant business to the Firm. The Firm's discriminatory practices have caused a substantial gender-based disparity in origination credits throughout the Firm—between 2014 and 2016, the average amount of origination credits for male shareholders was nearly *double* that of female shareholders.

Ogletree defines the *managing attorney* as “The attorney responsible for overall management of the work, and relationship with the Firm, pertaining to a particular client. This may include billing responsibilities.” According to this policy, managing attorneys are generally the attorneys in charge of communicating with clients and managing the client's expectations and the work that is done to meet them.

Ogletree weighs origination and, to a lesser extent, managing credits heavily in making compensation decisions, while responsible attorney and working credits have very little impact on compensation.

By Firm practice, originating attorneys have been given the discretion to distribute origination, managing, responsible, and working credits in an arbitrary, subjective, or biased manner. The Firm allows originating attorneys to choose which attorneys will share origination credits and which will receive managing credits on that matter. Originating and managing attorneys then direct responsible and working attorneys to do the actual work on a matter. As a result, predominantly male managing and originating shareholders receive a disproportionate amount of the meaningful credit and compensation.

Ogletree defines the *responsible attorney* as “The attorney responsible for coordination management, strategic planning, staffing and overall success in the Firm's handling of a *particular matter*.” (emphasis added).

The applicable distinction between a managing attorney, who receives managing credit, and a responsible attorney, who receives responsible credit, is that the managing attorney purportedly manages the *client relationship* while the responsible attorney is responsible for the overall success of the *matter*.

Ogletree defines a *working attorney* as “the attorney who is working on the case.” Billable hours, responsible credits, and working credits are the most objective metrics that are considered in compensation decisions, but have the least impact on compensation. Consequently, the compensation rubric is stacked in a way that favors male attorneys.

Female attorneys are disproportionately assigned to be responsible or working attorneys, as opposed to originating or managing attorneys. This is the case even when female attorneys handle all of the tasks that are supposed to be completed by managing attorneys and for which

managing attorneys receive credit, including client contact, performing or managing the bulk of the actual work, and handling other aspects of a matter. Indeed, female responsible or working attorneys are also frequently charged with billing and collection or preparing status reports for originating and managing attorneys who are unfamiliar with that matter, so those attorneys can communicate knowledgeably with the client.

After the proposed compensation recommendations were announced at the end of January 2017, but before the numbers were approved by the equity shareholders, a large number of women shareholders met to discuss pay equity and raised the issue to Ogletree Deakins Women's Initiative ("ODWIN"). When female shareholders proposed asking that the Board of Directors conduct a pay equity audit, the head of ODWIN explained that there was nothing she could do and that the Board thought the female shareholders from California who had been complaining were "crazy." Nevertheless, multiple female shareholders continued to complain about compensation and the unfair allocation of credits. In response, the Firm announced a process to appeal origination disputes—creating the façade that aggrieved shareholders could contest an originating attorney's allocations. Upon information and belief, while setting up this appeal process, Ron Chapman, the highest paid male shareholder in the Firm – who benefits enormously from the discriminatory practices – announced to the other newly-appointed members of the credit appeal process, "We need to make it really hard to use because we don't want people to use it." Ogletree's old boys' club has created and maintained a blatantly discriminatory system in order to underpay women and make recourse inaccessible or impossible.

#### Common Promotion Policies

Ogletree's promotion policies and practices have created a glaring gender disparity in seniority at the Firm. Because the Firm does not promote women at rates remotely equal to those of similarly situated men, women represent a progressively lower percentage of each tier of the Firm as title and compensation rise.

For example, while women represent approximately 58% of Ogletree's associates, only 133, or 32%, of Ogletree's 415 shareholders are women. Of Ogletree's 234 non-equity shareholders, only 97, or 42%, are women. Of Ogletree's 181 equity shareholders, only 36, or 19%, are women.<sup>2</sup>

In order to maintain control over the Firm and shareholder compensation, Ogletree's male-dominated leadership maintains moving targets for non-equity shareholders pursuing promotion to equity status.

Ogletree's Equity and Non-Equity Shareholders policy sets forth the criteria for promotion to equity shareholder status: \$750,000 in origination credits, \$750,000 in management credits, \$500,000 in working credits, at least 1,800 billed hours per year, and at least 200 "Firm hours." The Firm frequently requires non-equity female shareholders to meet these thresholds for three consecutive years prior to promotion.

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<sup>2</sup> Firm demographics are reflected as of December 31, 2017

By contrast, there are numerous examples where Ogletree has promoted men who have failed to meet these criteria. In 2017 alone, Kevin Bland, Greg Cheng, William Duda, Bernhard Mueller, and Scott Kelly were promoted to equity shareholder without meeting the promotion criteria for three consecutive years. Ogletree maintained Keith Watts's equity shareholder status despite Mr. Watts not sustaining the criteria for three consecutive years.

The most flagrant example of such selective promotion is Evan Moses, whom Kim Ebert, the managing shareholder of the Firm at the time, conceded in an open partnership meeting did not come close to meet the criteria, but the Firm made an exception because of his (grossly inflated) managing numbers. Male equity shareholders Keith Watts and Vincent Verde were promoted under similar circumstances.

In contrast, Ogletree promoted only one woman to the equity tier for 2017. This female shareholder had met every criterion for three years, a standard the Firm did not require of men.

The Firm's discriminatory credit allocation system makes meeting the origination criteria for promotion very difficult for female non-equity shareholders to achieve, thereby creating a particularly strong barrier to women's advancement within the Firm.

In contrast, the Firm's old boys' club distributes origination credit so that male shareholders are able to meet the requirements without doing the work. The Firm also enables Board members who seek origination credit for a matter to determine what attorneys achieve what portion of origination credits. Likewise, the Firm eases these requirements for favored male attorneys who, despite receiving disproportionately high allocations, still have failed to meet these origination thresholds.

This system discriminates against and disparately impacts women by denying them promotions and promoting them less often and more slowly than equally or less qualified men. This impact is apparent in the dwindling proportion of women at each successive level of Ogletree's hierarchy.

#### Ogletree's Common Business Development and Job Assignment Practices

Female shareholders throughout the Firm are required to assume administrative duties such as office management, paralegal supervision and training, and event planning. These administrative, or "housekeeping," duties take substantial amounts of time from female shareholders while male shareholders are freed from these tasks. Instead, the Firm permits male attorneys to devote their time to case work and business development efforts, which Ogletree values highly and substantially rewards, particularly through compensation.

The Firm also requires female shareholders to perform the bulk of the actual legal work on its cases as the "responsible" or "working" attorneys, including client communications, legal research, developing case strategies, managing work, writing legal documents, and the countless granular tasks involved with litigation. "Responsible" and "working" credits, however, do not meaningfully affect shareholders' compensation, which is driven by origination and managing credits.

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Thus, while female shareholders are disproportionately consumed with casework and administrative tasks that do not affect their compensation, they are prevented from engaging in business development activities. In contrast, their male colleagues are afforded the time and availability to pursue business development efforts and are richly rewarded for doing so.

As female shareholders draft briefs, supervise younger lawyers and non-lawyer staff, and handle a broad range of client demands, the Firm selects male shareholders for pitch meetings, conferences, and other business development opportunities that enable those male shareholders to reap origination credit, management credit, and other compensation that is disproportionate to their contributions.

The result is that female shareholders at Ogletree primarily receive responsible and working credit for their work, while male shareholders disproportionately receive origination and managing credit. Because Ogletree places exponentially more value on origination and managing credit in its compensation-setting process, the Firm is able to systematically and discriminatorily pay female shareholders less despite their additional duties.

The Firm is also well aware of the disparate impact of its inequitable assignment of administrative roles to female shareholders. Ogletree has discriminatorily tasked female shareholders, including Ms. Knepper, with handling time-consuming administrative duties, which substantially decrease the amount of time they have to conduct billable work and grow their business.

In contrast, male shareholders rarely handle administrative tasks while Ogletree actively provides them with business development opportunities that women are excluded from, such as pitches, conferences, awards ceremonies, networking events, and other occasions for professional growth. When male attorneys meet potential clients, the male attorneys frequently demand origination credits despite not bringing the business into Ogletree. If a female attorney later brings the business from that client to Ogletree, the male hierarchy, abusing their power, frequently takes origination credits, often times deciding a discriminatorily low percentage of credit will be allocated to the female attorney. When female shareholders complain about the allocation of origination credits, the Firm's male managing shareholder frequently supports the male taking the greater percentage or all of the origination credits, to the female shareholder's disadvantage.

### Ogletree Discriminates Against Ms. Knepper in Pay

Ms. Knepper has performed at equal or higher levels than her male comparators, but has been paid less.

When Ms. Knepper transferred to the Orange County office in 2012, she requested to be paid at least equally to Matt Effland, a male shareholder of similar seniority who had recently moved from Indiana to Los Angeles. In 2011, Ms. Knepper earned higher credits than Mr. Effland in every single category, including approximately over \$100,000 higher originations and 100 more billable hours than Mr. Effland.

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However, Ogletree set Ms. Knepper's salary and bonus at approximately \$100,000 less than Mr. Effland's in 2012, making Ms. Knepper the lowest paid full-time shareholder in California by approximately \$60,000.

Ms. Knepper complained about the disparity to multiple members of Ogletree's Board of Directors and compensation committee, but Ogletree responded by increasing her pay by only \$10,000, to a level equal to what an associate with *four years less experience* would have made in the Orange County market.

Despite this, in 2012 Ms. Knepper outperformed many of the 27 predominantly male attorneys in Ogletree's \$300,000 pay band – substantially higher than she earned – in every compensation credit category, including having higher origination credits than approximately 5, higher managing credits than approximately 13, higher responsible credits than approximately 20, and higher working credits than approximately 15. In 2012, Ms. Knepper billed approximately 2,100 hours; for reference, the billable hours goal for promotion to equity status is 1,800 hours.

Ms. Knepper presented all of this information to the Compensation Committee and requested that Ogletree pay her a salary commensurate with her value and performance in 2013. Instead, Ogletree decided to pay Ms. Knepper approximately \$50,000 less than she requested.

Nevertheless, Ms. Knepper maintained her high performance. In 2013, of the 32 Ogletree attorneys who were paid in the \$300,000 band, Ms. Knepper had higher origination and managing credits than 13, higher responsible credits than 24, and higher working credits than 27. Ms. Knepper had higher origination and working credits than Managing Shareholder Keith Watts, as well as approximately 472 more billable hours, yet Ogletree paid Mr. Watts approximately \$125,000 more.

In 2014, Ms. Knepper made the Compensation Committee aware of how significantly they were underpaying her and requested the same salary as she requested the previous year, which would have placed her at the bottom of the pay band. Willfully ignoring this glaring disparity, Ogletree refused to change her salary at all and instead continued to pay her approximately \$50,000 less than she requested.

Ogletree continued to pay Ms. Knepper approximately \$125,000 less than Mr. Watts in 2014, a year in which she had significantly higher responsible and working credits, as well as approximately 1,341 more billable hours than Mr. Watts. To this day, Mr. Watts continues to be held to a lower standard than Ms. Knepper and many other female shareholders. For example, in 2016, Mr. Watts accrued only approximately *64 total billable hours*.

The Firm finally agreed to pay Ms. Knepper a higher salary for the year 2017, after she almost tripled her originations from 2015, though her pay is well under that of her male peers with similar originations and other credits.

Ms. Knepper has repeatedly complained about the gender-based pay discrimination to which Ogletree subjects her. Ms. Knepper has raised her underpayment in *every* shareholder

compensation interview and has submitted follow-up appeals as well. Her complaints have fallen on deaf ears.

Similarly, in 2017, the Firm circulated a survey as part of an application to be recognized among the Orange County Business Journal Best Places to Work. In her response to a survey question asking what the Firm could do to improve, Ms. Knepper explicitly requested a pay equity audit. Mr. Watts never followed up on this pay equity complaint.

#### Ogletree Discriminates Against Ms. Knepper in Business Development

In addition to underpaying Ms. Knepper and other women relative to male shareholders with substantially similar credits, Ogletree has consistently denied Ms. Knepper opportunities to earn credits in the first place.

In her over 12 years with Ogletree, *Ms. Knepper has never been invited on a business pitch to a prospective client*. Mr. Watts has purposefully kept Ms. Knepper out of business development opportunities and made it difficult for her to pursue her own opportunities throughout her time in Orange County.

After receiving no significant business development support from Mr. Watts in her first year in the Orange County office, Ms. Knepper emailed Mr. Watts requesting business opportunities. Mr. Watts took over a month to respond and said only that he would keep her in mind.

Before she came to California, Ms. Knepper managed to become the only non-equity shareholder on Ogletree's Association of Corporate Counsel ("ACC") national team to attend its annual conference. The ACC is one of the most important business development opportunities available to Ogletree shareholders. Despite Ms. Knepper's work to elevate Ogletree's standing in the ACC and integrate her clients into it, Ogletree has excluded Ms. Knepper from ACC events. For example, in 2017, Ms. Knepper requested to speak at an ACC SoCal event, but Mr. Watts denied her the opportunity even to attend the event. Furthermore, while at the 2017 ACC National Conference in Washington, D.C., Ms. Knepper requested to attend the dinner for ACC SoCal attendees but another male shareholder from Ogletree denied her the opportunity. Only three shareholders, all of whom were male were allowed to attend on behalf of the Firm; two of them were not even from Southern California.

Each year Ogletree holds an "In-House Counsel Exclusive" seminar which frequently draws over 800 attendees from around the country and world. Despite having many of her own clients in attendance, Ms. Knepper has never been allowed to speak at the event.

In September 2016, Ms. Knepper arranged an opportunity to speak with her client at this in-house seminar. Ms. Knepper proposed they both join the same panel discussion. After learning that Ms. Knepper would not be speaking, her client still requested that she arrange to attend the conference. Ms. Knepper was denied because there were not sufficient hotel rooms, despite her offer to be flexible in accommodations. Consequently, the Firm denied Ms. Knepper opportunity

to network with hundreds of potential clients while other predominantly male attorneys networked with Ms. Knepper's client.

In February 2017, Ms. Knepper received an email notifying her that the Anti-Defamation League would honor her client's in-house counsel. Holding her in high-esteem, the client named Ms. Knepper as a confidante whom he admires. In response, Ms. Knepper asked the Firm to sponsor the award with a \$1,500 donation that would also boost her and Ogletree's presence at the dinner ceremony. Mr. Watts never responded to Ms. Knepper's request.

By contrast, Mr. Watts routinely approved similar requests from male shareholders for costlier, low-profile events. For example, Mr. Watts approved male-shareholder Michael Sexton's request to sponsor an event with the Orange Catholic Foundation, even though it was unbudgeted.

In June 2017, Ms. Knepper requested permission to nominate one of her biggest clients for an Orange County Business Journal Award. Mr. Watts did not respond. After Ms. Knepper followed up with Mr. Watts in July 2017, he told her that her client would have to endure an interview process akin to being put up for shareholder before he would approve their nomination. In contrast, Vince Verde, a male shareholder asked Mr. Watts on July 24, 2017 to nominate his client for the same award. Mr. Watts responded within thirty minutes and told Mr. Verde, "Certainly nominate him and I would be happy to meet him."

Not only did Ogletree routinely deny Ms. Knepper business development opportunities, the Firm stonewalled or denied her efforts to develop business with the Orange County Business Journal In-House Counsel Awards, multiple ACC Galas and ACC Conferences—and these are just a few examples. In contrast, male shareholders have received funding and support for their development opportunities and are frequently invited to benefit from opportunities they did not create, whereas Ms. Knepper has had to generate all of her own business development opportunities.

#### Ogletree Discriminated Against Ms. Knepper in Credit Allocation

In addition to stifling Ms. Knepper's business development opportunities, Ogletree has decreased Ms. Knepper's compensation for the business she independently brings to the Firm by allowing male shareholders to receive credit for Ms. Knepper's work. Ogletree's leadership and policies enable male shareholders to allocate origination credits to themselves for Ms. Knepper's work and business she generates for the firm. These credit allocations have deprived Ms. Knepper of credits and compensation for her work and serve to disfavor female shareholders generally.

For example, in February 2014, Ms. Knepper gave a presentation to the Laguna Beach Chamber of Commerce. During that presentation, she had a productive conversation with an insurance broker. On April 10, 2014, the broker referred a client to Ms. Knepper for representation on an impending high stakes sexual harassment lawsuit—Ms. Knepper generated this business without involvement from any Ogletree shareholder. Ms. Knepper arranged a pitch meeting with the business owners. Within three weeks, she successfully generated this client's business for the firm. On April 28, 2014, the client emailed Ms. Knepper to request her services specifically, rather than inquiring about Ogletree generally. Later that day, Ms. Knepper received an email from

Anthony Byergo—a male shareholder who wanted to receive 50% of the originating credit. Even though Ms. Knepper independently generated this matter without support from the Firm or another shareholder, Mr. Byergo claimed he had an unrelated previous relationship with the client's insurance company. Ms. Knepper appealed Mr. Byergo's allocation, but the Firm forced her to yield to Mr. Kim Ebert, the Firm's then-managing shareholder and final arbiter of credit allocations. Mr. Ebert assigned Mr. Byergo 40% of the origination credit for a matter that he did not contribute to originating and performed no work on whatsoever, while Ms. Knepper managed 100% of the matter.

This is but one example of Ogletree's credit allocation policies, which provide male shareholders with credits at the cost of the female shareholders who actually do the work. Ogletree then uses the resulting credit disparity as pretext to compensate and promote female shareholders such as Ms. Knepper at lower levels than the male shareholders who receive credit for female shareholders' work.

Ogletree assigned Ms. Knepper to flat-rate cases that arbitrarily limited the credits she earned, regardless of her performance. For example, in 2016, Ron Chapman arranged for a flat-rate client fee on one of Ms. Knepper's cases. Under this agreement, Ms. Knepper was required to handle an entire case, including discovery and arbitration, but could only bill \$100,000. The case accumulated approximately over \$400,000 in fees and required Ms. Knepper to write off hundreds of hours of her time that could have used to accumulated credits on other matters or develop her book of business. This directly impacted Ms. Knepper's efficiency rating, which is evaluated by the compensation committee, as well as the fact that she is judged on dollars collected, not billed.

Ogletree also assigns a disproportionate amount of Employment Practices Liability Insurance ("EPLI") cases to female shareholders. EPLI cases which come with pre-negotiated billing rates that are lower than shareholders' normal rates. This pattern and practice artificially deflates female shareholders' compensation credits by decreasing the value placed on their work.

Ms. Knepper has complained to the Firm's compensation committee about disproportional amount of EPLI work she has been tasked with and the effect it has on her compensation, but Ogletree has not rectified the pay disparity.

Male attorneys at Ogletree have made clear that when new clients come to the Firm through to an initial EPLI contact, the origination credits for the attorney with the insurance company relationship will be reduced and the origination credits for the attorney with the client relationship will increase. The standard formula is that origination credits will be allocated 100% to the insurance attorney during the first case, 75% in the second case, 50% in the third case and 0% by the fourth case. Female attorneys, however, are expected to give 100% of the origination credits to the insurance attorney no matter how much business they are able to generate for the client who happens to have the insurance policy – even on matters that are not covered by insurance.

#### Ogletree Discriminated Against Ms. Knepper in Promotions

Ms. Knepper has performed at equal or higher levels than male equity shareholders since at least 2013. Since 2016, Ms. Knepper has requested to be promoted to equity shareholder.

Ogletree's male leadership has denied her promotion by applying subjective and discriminatory standards.

For example, in 2012, Managing Shareholder Keith Watts had approximately \$457,000 of originations, approximately \$300,000 less than the standard for promotion to equity shareholder. Mr. Watts also billed approximately 1,601 hours, approximately 200 under the standard. By contrast, Ms. Knepper had higher origination credits that year, substantially similar responsible credits, higher working credits, and approximately 500 more billable hours in 2012. Despite this, Ogletree promoted Mr. Watts over Ms. Knepper to equity shareholder in 2013, even though Ms. Knepper vastly outperformed Mr. Watts. Ogletree then paid Mr. Watts approximately \$125,000 more than Ms. Knepper in 2013 target compensation alone, before equity profit-sharing distributions.

Ms. Knepper continued to outperform Mr. Watts. In 2013, Ms. Knepper had approximately \$368,000 more originations credits than Mr. Watts, approximately \$73,000 more working credits, and approximately 472 more billable hours.

As a further example, in 2012, Mr. Moses, a shareholder in the Los Angeles office, earned less than half of the \$750,000 of originations that were required for promotion to equity shareholder. Regardless, Ogletree promoted Mr. Moses to equity shareholder status. Even with the discriminatory support of the Firm's predominantly-male leadership, Mr. Moses continued to fall below the origination requirement in 2013 and 2014. However, Ogletree now pays Mr. Moses approximately \$235,000 more than Ms. Knepper in target compensation and bonuses. Including equity profit-sharing distributions, Mr. Moses's total compensation, on information and belief, is approximately over \$400,000 more than Ms. Knepper's.

Ms. Knepper met every single credit requirement for promotion to equity shareholder in 2016, with approximately \$797,000 of originating credits (\$750,000 standard), approximately \$767,000 of managing credits (\$750,000 standard), approximately \$584,000 of working credits (\$500,000 standard), and approximately 1,800 billable hours (1,800 standard).

On November 8, 2016, Ms. Knepper emailed Ogletree's managing shareholder, Matt Keen, and notified him that she was on track to meet all of the criteria and wanted to pursue promotion to equity status.

Ogletree had no excuse not to promote Ms. Knepper. Ogletree declined to promote Ms. Knepper or even address the topic in her compensation review, later relying on the new, pretextual three-year requirement. This ostensible three-year requirement is one of the Firm's moving-target criteria that predominately male equity shareholders apply to deny female shareholders pay and promotions. But the Firm does not consistently apply the same criteria to male shareholders. Under this purported rule, female attorneys are denied promotions unless they have satisfied the credit-allocation thresholds for each of the three prior years. The Firm's written policy only requires attorneys to meet their credit allocations for the single year prior to promotion.

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In 2017, Ogletree promoted Kevin Bland to equity shareholder, based on his 2016 credit allocations and ignored that Mr. Bland only satisfied the reported standards for one of the three relevant years. Ogletree now pays Mr. Bland a salary that exceeds Ms. Knepper's by approximately \$60,000. Including equity profit-sharing distributions, Mr. Bland's total compensation may exceed Ms. Knepper's by approximately \$200,000.

Plaintiff provides notice of violations of Cal. Lab. Code § 1197.5 on behalf of herself and all similarly aggrieved former and current female attorneys of Ogletree in California.

### **Retaliation (Cal. Lab. Code §§ 98.6, 1102.5, and 1197.5(k))**

Ogletree retaliated against Ms. Knepper in response to her internal complaints of discrimination, harassment, fraud, the foregoing unlawful sex-based pay disparities and other violations of California or Federal law, in violation of Cal. Lab. Code §§ 98.6(a), 1102.5(b-d), and 1197.5(k).

Ogletree retaliated against Ms. Knepper in response to the actions she took to enforce the California Equal Pay Act, in violation of Cal. Lab. Code § 1197.5(k)(1). Ogletree and agents acting on its behalf also retaliated against Ms. Knepper in violation of Cal. Lab. Code § 1102.5(b-d) because (1) she disclosed information, or alternatively, because Ogletree and its agents believed Ms. Knepper disclosed or may have disclosed information, to a government or law enforcement agency, to persons with authority over her, and to Ogletree employees who had the authority to investigate, discover, or correct the violation and/or noncompliance, which information she had reasonable cause to believe disclosed violations of and noncompliance with state and federal statutes, and local, state, and federal rules and regulations prohibiting discrimination, harassment, fraud, and sex-based pay disparities, including Title VII, the California Fair Employment and Housing Act, the Equal Pay Act, and the California Equal Pay Act; (2) she refused to participate in activities that would result in the foregoing violations; (3) she exercised her rights protected under Labor Code Section 1102.5. Finally, Ogletree retaliated against Plaintiff in violation of Cal. Lab. Code § 98.6 because (1) she engaged in the aforementioned conduct delineated by Section 1102.5; (2) she complained that she is owed unpaid wages; and (3) because she exercised her rights under the foregoing laws and under Cal. Lab. Code §§ 232, 232.5, and 1197.5(k) to discuss her wages and terms and conditions of employment.

Ms. Knepper has complained about and resisted Ogletree's discriminatory policies and harassment since at least 2012. In response to Ms. Knepper's complaints, Mr. Watts and others denied Ms. Knepper compensation, credits, business development, and other important facets of employment disproportionately afforded to male shareholders.

Ms. Knepper has raised her underpayment in *every* shareholder compensation interview and has submitted follow-up appeals as well. Her complaints have fallen on deaf ears.

In 2017, the Firm circulated a survey as part of an application to be recognized among the Orange County Business Journal Best Places to Work. In her response to a survey question asking what the Firm could do to improve, Ms. Knepper explicitly requested a pay equity audit. Mr. Watts never followed up on this pay equity complaint.

Mr. Watts has routinely refused to fund Ms. Knepper's business development initiatives and rejected Ms. Knepper's expense requests without cause, while he has funded and supported male shareholders without hesitation.

Ms. Knepper complained about Mr. Watts's retaliatory behavior to Joe Beachboard, the Firm's Co-Managing Shareholder, both via email and a direct phone call in March 2017. Mr. Beachboard failed to follow up with Ms. Knepper in any way. In July 2017, Mr. Watts sent an email to all of the Orange County shareholders that was hostile to Ms. Knepper. Ms. Knepper complained to him directly and at Ms. Knepper's request, the Firm launched an investigation. As part of this investigation, Ms. Knepper again reported the discrimination, harassment, retaliation, and hostile work environment to the Firm's leadership. Four months later, the Firm responded by refusing to acknowledge its wrongdoing and dismissing Ms. Knepper's complaints.

Ogletree engaged and continues to engage in these violations willfully and intentionally.

The firm's retaliatory misconduct against Ms. Knepper is consistent with its treatment of other female attorneys. On information and belief, Ogletree has retaliated against other female attorneys who have complained of discrimination or harassment. When numerous women have complained about discrimination in pay, business development opportunities, credit allocations, and promotion, the Firm has retaliated against them via numerous adverse employment actions, including *inter alia*, dismissing their complaints, removing them from their offices, opposing their promotions or compensation raises, and increasing their discriminatory actions against them. Upon information and belief, when a female shareholder asked the Managing Shareholder of the Firm, Matt Keen, about the Firm's response to gender discrimination complaints, he said, "we're not real good at practicing what we preach."

**Pay Secrecy, Unlawful Deductions from Wages, and Lack of Timely Payment (Cal. Lab. Code §§ 204, 204c, 204.2 221, 223)**

Ogletree's actions described above constitute violations of Cal. Lab. Code §§ 204, 204c, and/or 204.2 because they have deprived Plaintiff and female, California attorneys of wages earned, due, and owing throughout their employment.

In addition, non-equity shareholders at Ogletree are only paid of 90% of their base salary in their normal semi-monthly payments. The other 10% is held back and paid at the end of the year, resulting in untimely payment, an unlawful deduction in violation of Labor Code Section 221, and secret payment of a lower wage, in violation of Labor Code 223.

Ogletree engaged in these violations willfully and intentionally. The Firm has been on notice of these violations for several years and has failed to remedy its unlawful wage policies. In October of 2014, non-equity shareholders at Ogletree raised their concerns about this holdback policy with Ogletree leadership. In response, Betsy Johnson, Managing Shareholder of the Los Angeles office, claimed the firm's holdback policy did not constitute withholding compensation but rather that the holdback policy provides a 'bonus' to non-equity shareholders for still being employed on December 31 of each year. This purported 'bonus' is merely the compensation

non-equity shareholders earn throughout the year that the Firm deducts from their paychecks, in violation of Cal. Lab. Code §§ 221 and 223.

**Incorrect Wage Statements (Labor Code Section 226)**

As a result of the above-described practices for commission wages, Ogletree willfully failed to provide accurate itemized statements showing gross wages earned by female California attorneys, in violation of Cal. Lab. Code § 226.

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Plaintiff alleges that these violations are ongoing and continuing and that they affected and continue to affect all current and former female attorneys who work or have worked for Ogletree in California at any time on or after the date that is one year prior to the filing of this letter.

On behalf of our client and similarly aggrieved former and current female attorneys of Ogletree, we request that the LWDA investigate the alleged violations, or provide timely notice to the undersigned if it chooses not to investigate the allegations.

Thank you for your attention to this matter.

Very truly yours,



David Sanford

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