

COPY
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Timothy W. Fitzgerald
SPOKANE COUNTY CLERK

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF SPOKANE

LINDA HEINEN

Plaintiff,

vs.

KOHL'S DEPARTMENT STORES, INC.
and HOLLY "RENEE" HENSON,

Defendants.

Case No. 18-2-00746-6

**AMENDED COMPLAINT & DEMAND
FOR JURY TRIAL**

The Plaintiff, LINDA HEINEN, by and through MATTHEW Z. CROTTY, of CROTTY & SON LAW FIRM, PLLC, and MICHAEL B. LOVE, of MICHAEL LOVE LAW, PLLC, complains of Defendants and alleges as follows:

I. PARTIES, JURISDICTION, & VENUE

1. Linda Heinen was employed by the above-captioned Defendants during the time-frame relevant to this lawsuit and worked in Spokane County, Washington, on behalf of Defendants.

2. Defendant Kohl's Department Stores, Inc. is based in Wisconsin, incorporated in Delaware, conducted business in Spokane County, Washington, at all times relevant to this lawsuit,

AMENDED COMPLAINT & DEMAND FOR JURY
TRIAL - 1

1 and utilizes a registered agent who is located at 505 West Riverside Ave, Ste. 505, Spokane,
2 Washington 99201.

3 3. Defendant Holly "Renee" Henson is a resident of the State of Washington, was a
4 resident of the State of Washington during the timeframe relevant to this lawsuit, is an employee of
5 Kohl's, and supervised Ms. Heinen during the timeframe relevant to this lawsuit.

6 4. The Spokane County Superior Court has jurisdiction over this case.

7 5. Venue is proper in Spokane County because, *inter alia*, Defendants conduct business
8 in Spokane County and the acts and omissions giving rise to Ms. Heinen's complaint took place in
9 Spokane County, Washington.

11 II. FACTS

12 6. Ms. Heinen incorporates the above facts as if pled verbatim herein.

13 7. On or about February 1, 2009 Kohl's hired Ms. Heinen as its District Manager for
14 District 102, which was later called District 60. Up until that point Ms. Heinen had worked for
15 Target for over 19 years.

16 8. At all times relevant to this lawsuit Ms. Heinen's direct supervisor was Regional
17 Manager Renee Henson. Ms. Henson, in turn, reported to Territory Manager Peter Riley. Upon
18 information and belief, Ms. Henson is approximately twenty years younger than Ms. Heinen.

19 9. From February 1, 2009 until January 4, 2018 Ms. Heinen's work performance at
20 Kohl's was exemplary. At the start of her tenure with Kohl's Ms. Heinen supervised eight stores. At
21 the end of her employment that number had grown to 13. Ms. Heinen worked approximately 60-80
22 hours/week on Kohl's behalf. Ms. Heinen made approximately 120 flights per year on Kohl's behalf.

23 10. Ms. Heinen's district was consistently ranked among the top performing districts in
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25

1 the company.

2 11. In 2013 Ms. Heinen's District was ranked 16 out of 91 Districts in the United States.

3 12. In 2014 Ms. Heinen's District was ranked 22 out of 80 Districts in the United States.

4 13. In 2015 Ms. Heinen's District was ranked 20 out of 80 Districts in the United States.

5 14. In 2016 Ms. Heinen's District was ranked approximately 43 out of 80 Districts in the
6 United States. In 2016 Ms. Heinen received a \$30,000 "equity award" - - - a "long term incentive
7 award...intended to retain key leaders." The change in Ms. Heinen's district's ranking was based
8 on her medically caused seven week absence from work which is described below.

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10 15. In the August 2016 timeframe Ms. Heinen requested workplace medical leave in
11 order to address depression and stress Ms. Heinen was experiencing in addressing a condition
12 affecting her husband's health and wellbeing. Ms. Heinen made this request to Ms. Henson.

13 16. A manager's request for workplace leave is informally referred to, within Kohl's, as
14 "careericide."

15 17. Initially Kohl's, via its agent Sedgewick Claims Administration, denied Ms. Heinen
16 all of the benefits associated with her long-term leave request. Ms. Heinen protested Defendants'
17 denial of all the benefits associated with the short-term leave.

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19 18. Following Ms. Heinen's protest, which required Ms. Heinen to obtain support from
20 her physician and counselor, Kohl's ultimately allowed Ms. Heinen to take seven weeks of paid
21 leave. Ms. Henson was aware of the fact that Ms. Heinen objected to the company's initial denial
22 of the workplace leave benefits

23 19. In processing Ms. Heinen's request for workplace leave and Ms. Heinen's subsequent
24 appeal of Kohl's agent's denial of Ms. Heinen's requests for short term disability benefits associated

1 with that leave Kohl's was made aware that Ms. Heinen suffered from depression, that Ms. Heinen's
2 depression resulted in "difficulties making decisions" and "difficulty concentrating," and that Ms.
3 Heinen was seeing numerous mental health care providers to address her depression.

4 20. Although Kohl's was aware of Ms. Heinen's disability it did not engage in the
5 interactive process following her return to work so as to ascertain whether her disability placed any
6 functional limitations on Ms. Heinen's ability to do her job.

7 21. And although on notice of Ms. Heinen's disability and its effect on her ability to
8 concentrate or make decisions, Ms. Henson refused to give Ms. Heinen any help in the summer of
9 2017 when Ms. Heinen asked Ms. Henson for decision making help as it relates to the stores Ms.
10 Heinen managed which were located in Coeur D Alene, Idaho and Meridian, Idaho.

11 22. Ms. Heinen returned from her workplace leave in late 2016. And, upon her return to
12 work, the "temperature" between Ms. Heinen and Ms. Henson's relationship began to change.

13 23. During Ms. Heinen's absence Ms. Henson assumed Ms. Heinen's job
14 responsibilities.

15 24. Given the fact that Ms. Henson now had to assume Ms. Heinen's job responsibilities
16 along with her own, District 60's performance (temporarily – see below) suffered, which, in turn,
17 reflected poorly on Ms. Henson's Region's performance.

18 25. On or about April 11, 2017, Ms. Henson and Ms. Heinen traveled to Southern Idaho
19 as part of a work-related trip. During that trip, while driving on Eagle Road near Boise, Idaho, Ms.
20 Henson asked Ms. Heinen "when are you going to retire?" Ms. Henson stated that the "retirement"
21 question came up during a recent "talent builder meeting."

22 26. Ms. Heinen responded that she "did not know" when she was going to retire and
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1 further stated that she could not imagine “completely” retiring.

2 27. One of the 13 stores that Ms. Heinen managed was located in Northern Idaho. That
3 store’s manager (hereinafter “Mr. B.”) had a disability stemming from a brain injury that resulted in
4 headaches and short term memory loss. The injury arose following Mr. B’s involvement in a head
5 on car crash.

6 28. Mr. B assumed his role as the North Idaho store’s manager in October 2016. The
7 store that Ms. B assumed control over had, before Mr. B’s arrival, experienced some management
8 issues - - - issues that took Mr. B considerable time to address. Significantly, the management issues
9 that Mr. B was tasked with addressing exacerbated Mr. B’s headaches and memory loss. Upon
10 information and belief, Mr. B received medical attention regarding his disabilities.

11 29. On or about April 30, 2017, Ms. Henson first questioned Ms. Heinen about Mr. B’s
12 disabilities and his store’s performance. Ms. Henson asked Ms. Heinen “what are you going to do
13 about Mr. B?” Ms. Heinen told Ms. Henson that she (Heinen) had been assisting Mr. B with his
14 disability in developing calendaring, checklist, and routines that would improve Mr. B’s
15 performance. Ms. Heinen also told Ms. Henson that Mr. B’s assistant store manager, Mr. F, (who
16 had no known disabilities) was a factor that was affecting Mr. B’s store’s performance. As part of
17 this conversation, Ms. Heinen made clear to Ms. Henson that Mr. B’s disability could not be a factor
18 in assessing Mr. B’s performance. Ms. Heinen made this statement given her good faith reasonable
19 belief that Ms. Henson wanted to target Mr. B on account of his disability. Ms. Heinen further made
20 that statement in reliance on page 3 of the “Kohl’s Ethical Standards and Responsibilities” manual
21 which provides, in relevant part, that “individuals who report an ethical or legal concern in good
22 faith will never be subject to retaliation.” Here Ms. Heinen reasonably believed that she had an
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1 ethical obligation to inform Ms. Henson that Mr. B's disability was a factor in his performance and
2 that his disability should not be held against him.

3 30. From early 2017 through December 2017, approximately two times a month, Ms.
4 Henson would re-visit Mr. B's store's performance with Ms. Heinen, say words to the effect of
5 "what are you going to do about" Mr. B, to which Ms. Heinen would respond about her efforts to
6 accommodate Mr. B's disabilities. At times Ms. Heinen would ask Ms. Henson as to what she
7 (Henson) would do vis-à-vis Mr. B to which Ms. Henson would reply "I'll let you make that
8 decision."

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10 31. On or about November 3 2017 Ms. Heinen told Ms. Henson that she (Heinen) had
11 planned to terminate Mr. F's employment and that she would not be terminating Mr. B's
12 employment.

13 32. As of November 2017 Ms. Heinen's District was ranked 23 out of 80 Districts in the
14 United States.

15 33. During the late 2017 time frame Ms. Heinen's sales performance ranked her in the
16 top 7, out of 80 districts, for year-to-date comparable sales (comp sales) nationwide. Her
17 performance reviews reflect solid workplace performance.

18
19 34. On or about December 13, 2017 Renée Henson, Kohl's Regional Manager called Ms.
20 Heinen and informed her that Peter Riley, Kohl's Territory Manager, wanted to visit Ms. Heinen's
21 Spokane, Washington-area stores the following day.

22 35. One of the stores visited was that of Mr. B's. After that visit Mr. Riley expressed
23 displeasure regarding Mr. B's store's performance. Mr. Riley did not make his critique known to
24 Mr. B, instead he made his displeasure known to Ms. Heinen and Ms. Henson. Mr. Riley accused
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1 Mr. B of lying.

2 36. Ms. Heinen vehemently disagreed with Mr. Riley's assessment of Mr. B. Ms. Heinen
3 stated that Mr. B's performance was attributable to his disability and that Mr. B's disability should
4 not be held against him in judging his performance.

5 37. On December 15, 2017, after the above-referenced conversation, Ms. Henson called
6 Ms. Heinen. Ms. Henson began the conversation by saying that she was "worried" about Ms.
7 Heinen. To that query Ms. Heinen asked Ms. Henson "what is going on? Please be transparent if
8 there is something you want to tell me?" In response to that query Ms. Henson did not state, imply,
9 or otherwise indicate that Ms. Heinen's job was in jeopardy. In fact during the following week's
10 conference call Ms. Henson praised Ms. Heinen's workplace performance.
11

12 38. Indeed, as of December 2017 Ms. Heinen's District ranked *highest* out of the four
13 District's Ms. Henson managed, in "sales comps" and "total score card" ranking. As of December
14 2017 Ms. Heinen ranked number 7, out of 80, in the company for year-to-date "comp sales."

15 39. Approximately two weeks earlier Ms. Heinen had received a "2017 Black Friday"
16 performance certificate that recognized her 6.6% "sales comp" and 6.6% "credit over goal". The
17 certificate was signed by Mr. Riley.
18

19 40. On January 5, 2018 Ms. Henson terminated Ms. Heinen's employment. The stated
20 reason for the decision was Ms. Heinen's alleged "poor leadership."

21 41. At the time of her termination Ms. Heinen was 61 years old.

22 42. The person that Kohl's chose to replace Ms. Heinen with was Jenni Appleyard.

23 43. Ms. Appleyard is younger than 40 years of age.

24 44. Upon information and belief, Ms. Appleyard does not have Ms. Heinen's training,
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1 experience, and workplace accomplishments.

2 45. During the January 5, 2018 meeting Ms. Henson presented Ms. Heinen with a
3 “Confidential Separation Agreement and General Release.” The Agreement offered Ms. Heinen
4 certain compensation in exchange for, among other things, Ms. Heinen waiving any and all claims
5 she may have against Kohl’s for violating the Age Discrimination in Employment Act (ADEA) or
6 its state law equivalent.

7 46. Kohl’s “poor leadership” justification for terminating Ms. Heinen’s employment is a
8 pretext.

9 47. Among other things, Ms. Henson had previously given Ms. Heinen a performance
10 certificate which provided, in relevant part:
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12 YOU HAVE BUILT A TEAM FILLED WITH PRIDE AND MOTIVATION! YOU
13 CONSISTENTLY PROVIDE THE LEVELS OF SUPPORT, COMMUNICATION
14 AND GUIDANCE THAT ALLOWS THE TEAM TO WIN AND HAVE FUN
15 DOING IT! WITH YOUR LEADERSHIP, THERE IS NOTHING THAT THE “D”
16 CAN’T ACCOMPLISH! YOU ARE APPRECIATED!

17 48. Ms. Heinen’s 2016 performance review, written by Ms. Henson, provides “you are a
18 leader that values action, communication and a focus on achievement.” Ms. Henson also writes:
19 “you have built a team that can achieve anything!”

20 49. In the 2016 timeframe Kohl’s paid Ms. Heinen \$30,000 as part of a leadership
21 retention incentive.

22 50. Kohls has a practice of informing employees who are experiencing workplace
23 performance problems of those problems and doing so before the employee is fired so as to give the
24 employee time to correct his or her performance problems.

25 51. At no point prior to January 5, 2018, did Ms. Henson tell Ms. Heinen that her

1 (Heinen's) job was in jeopardy.

2 52. At no point prior to January 5, 2018, did anyone from Kohl's tell Ms. Heinen that her
3 job was in jeopardy.

4 53. At no point in the year prior to January 5, 2018, did Ms. Henson receive any written
5 complaint from any Kohl's employee regarding Ms. Heinen's workplace performance.

6 **III. CAUSES OF ACTION**

7 54. Ms. Heinen incorporates the above paragraphs as if pled verbatim herein.

8 **(Count One – Violation of the Washington Law Against Discrimination RCW 49.60.180 &**
9 **RCW 49.44.090)**

10 55. In order to prove her age discrimination claim Ms. Heinen must prove that: (1) she
11 was older than 40 years of age and performing her work satisfactorily (2) was discharged (3) was
12 replaced by a person younger than 40 years of age (or substantially younger than her even if over 40
13 years of age), and (4) her age was a substantial (as opposed to the *only*) factor in the Defendants'
14 decision to terminate her employment.

15 56. Ms. Heinen is 61 years old and was that age at the time of her firing.

16 57. Ms. Heinen performed her work satisfactorily during the entirety of her employment
17 with the Defendants.

18 58. Ms. Heinen was replaced by an employee who was in her 30s.

19 59. Ms. Heinen's age was a substantial factor in Defendants' decision to terminate Ms.
20 Heinen's employment (and their explanations to the contrary are a pretext) given, *inter alia*, (a) Ms.
21 Henson asking as to when Ms. Heinen would retire, (b) Defendants replacing Ms. Heinen with a
22 younger employee who was substantially less qualified than Ms. Heinen, (c) Defendants'

1 inconsistent explanation for her termination, i.e. telling Ms. Heinen that she was being replaced
2 because of concerns regarding her leadership but giving her positive performance reviews (and
3 compensation) regarding her leadership, (d) Defendants offering to pay Ms. Heinen money in
4 exchange for her not suing it for age discrimination, and (e) Defendants not following its
5 practice/policy of giving Ms. Heinen notice of her (alleged) performance problems before
6 terminating her employment.

7 60. Defendants' discrimination has caused Ms. Heinen damages in an amount to be
8 proven at trial.

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10 **(Count Two – Violation of Washington Law Against Discrimination - Retaliation)**

11 61. The WLAD's anti-retaliation provision provides, in part:

12 It is an unfair practice for any employer, employment agency, labor union, or other
13 person to discharge, expel, or otherwise discriminate against any person because he
14 or she has opposed any practices forbidden by this chapter, or because he or she has
15 filed a charge, testified, or assisted in any proceeding under this chapter. RCW
16 49.60.210.

17 62. Practices protected under the WLAD's anti-retaliation provision include, without
18 limitation, opposing management's desire to discriminate against Mr. B on account of Mr. B's
19 disability.

20 63. Ms. Heinen opposed Ms. Henson's and Kohl's targeting of Mr. B on account of Mr.
21 B's disability which, in turn, was a substantial factor in Defendants' decision to terminate her
22 employment. Defendants' alleged non-retaliatory reasons are pretextual given its deviation from its
23 practice of informing its employees of performance deficiencies before firing them, replacement of
24 Ms. Heinen with a lesser qualified employees, and its inconsistent justifications for its alleged reason
25 (leadership problems) for terminating Ms. Heinen's employment.

1 64. Defendants' actions caused Ms. Heinen damages in an amount to be proven at trial.

2 **(Count Three – Wrongful Discharge Based Upon Breach of a Promise)**

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4 65. Washington law clearly protects employees from wrongful discharge based upon a
5 breach of a promise contained in an employee's handbook regardless of whether the employee's
6 employment is at-will. *See Bulman v. Safeway*, 144 Wn.2d 335 (2001).

7 66. In this instance page 3 of the "Kohl's Ethical Standards and Responsibilities"
8 manual provides, in relevant part, that "individuals who report an ethical or legal concern in good
9 faith will never be subject to retaliation." This statement is an enforceable promise.

10 67. Ms. Heinen justifiably relied upon this promise in Kohl's manual when she
11 informed Ms. Henson that Mr. B's disability was a factor in his performance and that his disability
12 should not be held against him.

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14 68. Ms. Heinen was aware of the enforceable promise contained in Kohl's "Kohl's
15 Ethical Standards and Responsibilities" at the time she informed Ms. Henson that Mr. B's
16 disability was a factor in his performance and that his disability should not be held against him.

17 69. Kohl's breached this promise of specific treatment when it terminated Ms. Heinen's
18 employment.

19
20 70. Defendant breached its promise to Ms. Heinen by terminating her employment in
21 retaliation for the above-referenced report.

22 71. Defendants' actions caused Ms. Heinen damages in an amount to be proven at trial.

23 **(Count Four – Aiding and Abetting violation of WLAD – Renee Henson)**

1 72. The WLAD makes it illegal for any person to “aid, abet, encourage, or incite the
2 commission of any unfair practice, or to attempt to obstruct or prevent any other person from
3 complying with the” WLAD’s requirements. RCW 49.60.220.

4 73. Ms. Henson aided and abetted in Kohl’s discriminatory and retaliatory treatment of
5 Ms. Heinen by aiding Kohl’s in its effort to terminate Ms. Heinen’s employment on account of her
6 age and/or the above-described protected activity. Ms. Henson also attempted to prevent Ms. Heinen
7 from assisting Mr. B with his disabilities.

8 74. Ms. Henson’s acts and omissions have caused Ms. Heinen damages in an amount
9 to be proven at trial.

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11 **(Count Five – Washington Family Medical Leave Act (WFMLA))**
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13 75. Ms. Heinen worked in excess of 1,250 hours for Kohl’s in the year prior to January
14 5, 2018. Additionally, Ms. Heinen worked in excess of 1,250 hours for Kohl’s in the year prior to
15 her requesting the above-referenced sick leave in the August 2016 timeframe.

16 76. Kohl’s employs in excess of 50 employees within a 75 mile radius of 505 West
17 Riverside Ave, Ste. 505, Spokane, Washington 99201, and employed that amount of individuals
18 within a 75 mile radius of 505 West Riverside Ave, Ste. 505, Spokane, Washington 99201, during
19 calendar years 2016 and 2017.

20 77. The taking of medical leave under the WFMLA cannot be used as a “negative
21 factor” as it relates to an employer deciding to, among other things, terminate an employee’s
22 employment.
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1 78. Kohl's and Ms. Henson used Ms. Heinen's taking of medical leave as a factor in
2 deciding to terminate her employment with the company.

3 79. Kohl's actions caused Ms. Heinen damages in an amount to be proven at trial.

4 **(Count Six – Disability Discrimination & Failure to Accommodate – RCW 49.60.180.)**

5 80. Ms. Heinen suffered from depression (a disability), was performing her work
6 satisfactorily, and was terminated on account of that disability.

7 81. As of mid-to-late 2016, if not earlier, Kohl's was made aware that Ms. Heinen
8 suffered from depression, that Ms. Heinen's depression resulted in "difficulties making decisions"
9 and "difficulty concentrating," and that Ms. Heinen was seeing numerous mental health care
10 providers to address her depression.

11 82. Although Kohl's was aware of Ms. Heinen's disability it did not engage in the
12 interactive process following her late-2016 return to work so as to ascertain whether her disability
13 placed any functional limitations on Ms. Heinen's ability to do her job moving forward.

14 83. And although on notice of Ms. Heinen's disability and its effect on her ability to
15 concentrate or make decisions, Ms. Henson refused to give Ms. Heinen any help in the summer of
16 2017 when Ms. Heinen asked Ms. Henson for decision making help as it relates to the stores Ms.
17 Heinen managed which were located in Coeur D Alene, Idaho and Meridian, Idaho.

18 84. In late 2016 Ms. Heinen informed Ms. Henson that her disability benefit appeal had
19 been granted, Ms. Henson's reaction was one that bordered on hostility, the import of her reaction
20 being that she would now have to manage a disabled employee.

21 85. Although Washington law states that conduct relating to a disability cannot be used
22 as grounds for termination, Kohl's admits that it relied on a June 6, 2017, email from Ms. Henson
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1 to Peter Riley (and others) in its decision to fire Ms. Heinen and that email references not only Ms.
2 Heinen's use of a therapist but also Ms. Heinen's "struggling to manage the current complexity of
3 her business" which, in turn, is conduct relating to her disability.

4 86. Defendants' failure to accommodate Ms. Heinen and disability discrimination
5 against Ms. Heinen have caused her damages in an amount to be proven at trial.

6 **IV. PRAYER FOR RELIEF**

7 Ms. Heinen respectfully seeks:

8 A. All damages allowed under the law including front pay, back pay, pre-judgment
9 interest, adverse tax consequences, liquidated damages, and general damages.

10 B. Attorneys' fees, costs, and litigation expenses as allowed under RCW 49.48.030,
11 49.60.030(2), and RCW 49.78.330(3).

12 C. A declaration that Defendants violated the WLAD, the common law relating to
13 wrongful discharge, and WFMLA.

14 D. All other relief that is just and equitable.

15 DATED this November 28, 2018.

16 CROTTY & SON LAW FIRM, PLLC

17 By: 

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22 MICHAEL LOVE LAW FIRM, PLLC

Michael B. Love

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Attorneys for Plaintiff

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1 **CERTIFICATE OF SERVICE**

2 The undersigned hereby certifies on the date below written, I caused a true and correct copy
3 of the foregoing document to be served on the following attorney, via the method indicated:

4 Sonja Fritts, WSBA #29097
5 Ogletree Deakins P.S.
6 1201 Third Avenue, Suite 5150
7 Seattle, WA 98101
8 Phone: 206-693-7051
9 Fax: 206-693-7058
10 Email: Sonja.fritts@ogletree.com

Via Email (per agreement)

11 I declare under penalty of perjury under the laws of the State of Washington that the
12 foregoing is true and correct and that this declaration was executed on November 28, 2018, at
13 Spokane, Washington.

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Matt Crotty