

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

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ANSWER

ELLEN PAO VS. KLEINER PERKINS CAUFIELD & BYERS LLC et al

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**FILED**  
Superior Court of California  
County of San Francisco

JUN 13 2012

CLERK OF THE COURT  
BY: *[Signature]* Deputy Clerk

8  
9 SUPERIOR COURT OF THE STATE OF CALIFORNIA

10 CITY AND COUNTY OF SAN FRANCISCO

11  
12 ELLEN PAO,

13 Plaintiff,

14 v.

15 KLEINER PERKINS CAUFIELD & BYERS  
LLC AND DOES 1-20,

16 Defendants.

Case No. CGC-12-520719

**ANSWER OF DEFENDANT KLEINER  
PERKINS CAUFIELD & BYERS TO  
PLAINTIFF'S COMPLAINT**

Complaint Filed: May 10, 2012

1 Defendant Kleiner Perkins Caufield & Byers LLC (“KPCB”) hereby answers the  
2 unverified complaint (“Complaint”) filed by plaintiff Ellen Pao as follows:

3 **GENERAL DENIAL AND FACTS SUPPORTING AFFIRMATIVE DEFENSES**

4 Pursuant to California Code of Civil Procedure § 431.30(d), KPCB generally denies each  
5 and every material allegation of the Complaint and further denies that Plaintiff has been damaged  
6 in the manner alleged, or in any manner or amount. KPCB vigorously denies that it discriminated  
7 against Plaintiff, retaliated against Plaintiff after she complained about harassment or  
8 discrimination, or that it violated its obligation to take reasonable steps to prevent discrimination  
9 from occurring.

10 KPCB denies that Plaintiff ever complained to KPCB that any co-worker or supervisor  
11 subjected her to unlawful harassment in 2007 or at any time during the five year period prior to  
12 late 2011/early 2012. When Plaintiff did raise concerns in late 2011/early 2012, Plaintiff was  
13 already represented by legal counsel and in the process of asserting claims against KPCB. KPCB  
14 promptly engaged an independent outside investigator who interviewed 17 KPCB partners,  
15 including every then current female KPCB partner, interviewed Plaintiff with her counsel present,  
16 provided Plaintiff multiple opportunities to provide information and documents, and, after a  
17 thorough review, concluded that Plaintiff’s discrimination and retaliation complaints were  
18 without merit.

19 KPCB further denies that Raymond Lane pressured Plaintiff to drop any harassment  
20 complaint or encouraged her to engage in a personal relationship with or marry an alleged  
21 harasser. Instead, at the end of Plaintiff’s consensual relationship with a married peer, she  
22 communicated to Lane the end of the relationship and her decision to put it behind her and move  
23 forward at KPCB. Based on Plaintiff’s request, Lane and other senior partners supported Plaintiff  
24 and she thanked Lane for his help and understanding. Plaintiff’s assertions that she continued to  
25 bring the relationship and alleged retaliation to the attention of senior partners at KPCB is not  
26 true; the last any of them heard of the incident until late 2011/early 2012 was her expression of  
27 gratitude and desire to move on.

28 KPCB additionally denies that Randy Komisar engaged in any harassment of Plaintiff.

1 As is consistent with the other flawed and false allegations in her Complaint, Plaintiff has twisted  
2 facts and events in an attempt to create legal claims where none exist. Komisar, a practicing  
3 Buddhist, gave Plaintiff a book of poetry written by Leonard Cohen during Cohen's five-year stay  
4 at a Zen monastery. That book was reviewed by the New York Times as "profound" and having  
5 "exceptional range", and was set to music by famed composer Philip Glass, including  
6 performances at Stanford University and the Lincoln Center. The gift of the book occurred after  
7 Plaintiff gave Komisar a book and a Buddha statue as holiday gifts following discussions the two  
8 had about Buddhism. Komisar had not given Plaintiff a holiday gift. The Cohen book was in fact  
9 purchased for Plaintiff by Komisar's wife. Although Plaintiff and her counsel met for several  
10 hours with the independent investigator retained to investigate her claims in 2012, she never  
11 mentioned the book or any harassment whatsoever by Komisar, and never returned or objected to  
12 the gift in the many years after receiving it.

13 KPCB further denies that it engaged in any retaliation whatsoever through Plaintiff's  
14 performance reviews. In fact, Plaintiff's self review in 2009 specifically highlighted the help she  
15 received from Komisar and other partners, whom she described as "supportive mentors and  
16 advisers". Plaintiff specifically requested Komisar review her performance after the incidents she  
17 alleges as harassment. Plaintiff's performance reviews in 2009, 2010 and 2011 contained both  
18 positive and negative feedback, though many of the same criticisms are raised throughout each of  
19 her reviews.

20 Plaintiff's 2009 review encouraged Plaintiff to speak up more effectively and  
21 influentially, step out more in a leading role, present more new investment ideas, and take more  
22 risks by incubating a high potential venture and owning it—hardly retaliatory input. The review  
23 also encouraged her to focus on her interpersonal and "EQ" skills to more effectively direct and  
24 motivate teams.

25 Similarly, Plaintiff's 2010 review advised Plaintiff that she was too "territorial", that  
26 others did not "trust her motivations" and that she had a "sense of entitlement rather than earning  
27 her position via contribution, expertise, and making her fellow[] partners successful." The review  
28 also encouraged Plaintiff to not be "passive" and "wait for orders" and instead to evolve into a

1 “thought leader” for her practice.

2 Plaintiff’s 2011 review stated that Plaintiff was “not viewed as a good team player” or  
3 trusted partner by others. The review again encouraged Plaintiff to be more proactive and speak  
4 up, and to provide more “thought leadership” like coming up with “big bold initiatives and ideas”.  
5 Although Plaintiff now seeks to categorize the performance criticisms as improperly motivated,  
6 they were in fact accurate descriptions of consistent flaws in her performance, and made by a very  
7 wide circle of those with whom she worked, inside and outside of KPCB. Based solely on  
8 repeated and widespread performance concerns, Plaintiff did not earn the necessary support of her  
9 male and female partners for promotion.

10 KPCB also denies that Plaintiff was excluded from any business activities or promotions  
11 because of her gender or in retaliation for her complaints of harassment and discrimination.  
12 KPCB also denies that it excluded women from two dinners in San Francisco in 2011 or that any  
13 KPCB event was marred or motivated by gender animus or discrimination. On the contrary, a  
14 dinner to which Plaintiff appears to refer as male-only was, in fact, attended by male and female  
15 KPCB partners, and male and female entrepreneurs and leaders.

16 As noted above, KPCB generally denies any other allegation or suggestion in her  
17 Complaint that Plaintiff was unlawfully treated in any way whatsoever.

18 **AFFIRMATIVE DEFENSES**

19 1. As a separate defense to the Complaint and to each cause of action therein, KPCB  
20 alleges that the Complaint and each purported cause of action therein fails to state a claim upon  
21 which relief may be granted.

22 2. As a separate defense to the Complaint and to each cause of action therein,  
23 Plaintiff has sued in the incorrect forum and her claims, which she has contractually agreed to  
24 submit to arbitration, must be asserted in an arbitration forum, contractual agreements which she  
25 has now breached.

26 3. As a separate defense to the Complaint and to each cause of action therein, no  
27 conduct by or attributable to KPCB was the cause in fact or legal cause of the damages, if any,  
28 suffered by Plaintiff. Indeed, Plaintiff did not advance to more senior positions at KPCB as a

1 result of performance flaws identified in her reviews and other performance issues, and she did  
2 not complain of alleged improper treatment as she alleges in her Complaint.

3 4. As a separate defense to the Complaint and to each cause of action therein, KPCB  
4 alleges that, should it be determined that Plaintiff has been damaged, then said damages were  
5 proximately caused by her own conduct. This conduct includes, as noted above, Plaintiff's  
6 performance flaws and also her failure to complain about what she now characterizes as illegal  
7 harassment, discrimination and retaliation.

8 5. As a separate defense to the Complaint and each cause of action therein, Plaintiff  
9 released, relinquished, waived and is estopped from asserting the claims upon which Plaintiff now  
10 seeks relief, as well as the forum in which she has chosen to publicly assert her claims. In  
11 particular, Plaintiff is estopped from alleging harassment, discrimination and retaliation of which  
12 she never complained years ago, and also estopped from seeking to ignore or repudiate her  
13 arbitration and non-disparagement agreements.

14 6. As a separate defense to the Complaint and each cause of action therein, Plaintiff's  
15 claims are barred by payment, setoff, and/or accord and satisfaction, including payments under  
16 the agreements containing non-disparagement and arbitration claims that she has now breached.

17 7. As a separate defense to the Complaint and each cause of action therein, KPCB  
18 alleges that Plaintiff has failed to comply with California Labor Code sections 2854, 2856, 2858  
19 and 2859, respectively, to the extent that Plaintiff failed to use ordinary care and diligence in the  
20 performance of her duties, failed to substantially comply with the reasonable directions of her  
21 alleged employer, and failed to exercise a reasonable degree of skill in performing her job duties,  
22 including, as outlined above, through her performance flaws and failure to complain.

23 8. As a separate defense to the Complaint and each cause of action therein, Plaintiff's  
24 claims are barred by the applicable statutes of limitation, including the many untimely acts  
25 alleged in her Complaint that fail to comply in any respect to the applicable one year statute of  
26 limitations for her claims.

27 9. As a separate defense to the Complaint and each cause of action therein, the claims  
28 are barred by the doctrine of laches, particularly given the stale nature of Plaintiff's claims and

1 the resources available to Plaintiff throughout the period alleged in her Complaint (including but  
2 not limited to her own educational background in the law) to assert her claims timely.

3 10. As a separate defense to the Complaint and each cause of action therein, recovery  
4 by the Plaintiff is barred in whole or in part by her failure to exercise reasonable care and  
5 diligence to mitigate any damages allegedly accruing to her. Indeed, Plaintiff not only failed to  
6 complain (despite the resources available to her), she also refused to comply with the  
7 performance coaching she repeatedly received.

8 11. As a separate defense to the Complaint and each cause of action therein, the  
9 alleged actions complained of were not based upon a discriminatory reason, but were based upon  
10 legitimate, non-discriminatory, job-related reasons, including Plaintiff's ongoing performance  
11 flaws noted above.

12 12. As a separate defense to the Complaint and each cause of action therein, recovery  
13 by the Plaintiff is barred in whole or in part by the doctrines of *in pari delicto*, unclean hands  
14 and/or after-acquired evidence. Plaintiff's unclean hands are confirmed by her refusal to abide by  
15 her arbitration and non-disparagement agreements, which she recently executed and affirmed  
16 while represented by outside legal counsel, and her choice to file false and scurrilous allegations  
17 in an improper forum.

18 13. As a separate defense to the Complaint and each cause of action therein, Plaintiff  
19 fails to state facts sufficient to support an award of compensatory damages against KPCB,  
20 including because any failure by Plaintiff to advance was caused by her own performance  
21 failings, and any emotional distress suffered by Plaintiff likely occurred as the result of turmoil in  
22 her personal life.

23 14. As a separate defense to the Complaint and each cause of action therein, Plaintiff  
24 fails to state facts sufficient to support an award of exemplary, punitive, liquidated and/or  
25 emotional distress damages against KPCB, as a result, in part, of the false nature of her  
26 allegations. Moreover, any award of punitive damages in this case would violate the due process,  
27 equal protection and excessive fines provisions of the California and United States Constitutions.  
28

1 15. As a separate defense to the Complaint and each cause of action therein, Plaintiff  
2 failed to exhaust her administrative remedies and prerequisites to suit. Indeed, KPCB has never  
3 been sent or served with an administrative charge filed by Plaintiff under the Fair Employment  
4 and Housing Act. Nor does Plaintiff attach any such charge to her complaint.

5 16. As a separate defense to the Complaint and each cause of action therein, the  
6 exclusive remedy, if any, for some or all of the damages alleged by Plaintiff is under the  
7 California Workers' Compensation Act, Cal. Lab. Code § 3200, *et seq.*

8 KPCB has insufficient knowledge or information on which to form a belief as to whether  
9 it has any additional, as yet unstated, defenses available. KPCB reserves the right to assert  
10 additional defenses in the event discovery indicates it would be appropriate to do so as well as  
11 counterclaims.


12 **PRAYER FOR RELIEF**

13 KPCB prays that the Court grant the following relief:

- 14 1. That the Complaint be dismissed with prejudice and that Plaintiff take nothing  
15 thereby;  
16 2. That judgment be entered in favor of KPCB on all claims;  
17 3. That KPCB be awarded its attorneys' fees and costs of suit; and  
18 4. For such other and further relief as this Court may deem proper.

19  
20 Dated: June 13, 2012

21 LYNNE C. HERMLE  
22 JESSICA R. PERRY  
23 SITTHIKIT CHARIYASATIT  
24 Orrick, Herrington & Sutcliffe LLP

25 By:   
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