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FILED
 ALAMEDA COUNTY
 MAR 23 2016
 CLERK OF THE SUPERIOR COURT
 By *[Signature]* Deputy

6 Attorney for Plaintiff
 7 BRANDON BOGUE

8 SUPERIOR COURT OF CALIFORNIA
 9 COUNTY OF ALAMEDA - UNLIMITED CIVIL JURISDICTION

10 BRANDON BOGUE,	)	CASE NO.:	RG16808824
11)		
12 Plaintiff,	)	COMPLAINT FOR DAMAGES AND	
13 vs.	)	REQUEST FOR JURY TRIAL	
14 KAISER FOUNDATION HOSPITALS, and )	)	1. DISABILITY DISCRIMINATION IN	
15 DOES 1 through 100, inclusive, )	)	VIOLATION OF FEHA	
16 Defendants )	)	2. FAILURE TO ENGAGE IN	
17 )	)	INTERACTIVE PROCESS IN	
18 )	)	VIOLATION OF FEHA;	
19 )	)	3. FAILURE TO PROVIDE	
20 )	)	REASONABLE ACCOMMODATIONS	
21 )	)	IN VIOLATION OF FEHA;	
22 )	)	4. WRONGFUL TERMINATION IN	
23 )	)	VIOLATION OF PUBLIC POLICY	

21 COMES NOW PLAINTIFF BOGUE, and complains and alleges as follows:

22 NATURE OF THE ACTION

23 1. This is an individual action brought by an employee against his former Kaiser
 24 Foundation Hospitals. Plaintiff Bogue (hereinafter "Plaintiff") alleges violations of the Fair
 25 Employment and Housing Act (hereinafter "FEHA") based upon the Defendants' discrimination on
 26 the basis of his disability, refusal to engage in a prompt, good faith interactive process to provide
 27 accommodations for Plaintiff, and failure to accommodate Plaintiff as required by California Fair
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BY FAX

1 Employment and Housing Act.

2 **PARTIES**

3 2. Plaintiff is and at all material times alleged herein, was a resident of County of
4 Alameda.

5 3. At all material times alleged herein, Plaintiff was employed by Defendant Kaiser
6 Foundation Hospitals.

7 4. In addition to the Defendant named above, Plaintiff sues fictitiously Defendants
8 DOES 1 through 100, inclusive, pursuant to Code of Civil Procedure §474, because their names,
9 capacities, status, or facts showing them to liable are not presently known. Plaintiff will amend this
10 complaint to show their true names and capacities, together with appropriate charging language,
11 when such information has been ascertained.

12 **JURISDICTION AND VENUE**

13 5. The acts of Defendants that form the basis for the causes of action in this complaint
14 occurred in the County of Alameda. Therefore, the San Francisco Venue is proper.

15 **EXHAUSTION OF ADMINISTRATIVE REMEDIES**

16 6. Plaintiff timely obtained a Right to Sue letter from the Department of Fair Employment
17 and Housing (hereinafter "DFEH"), a true and correct copy of which is attached hereto as Exhibit A.

18
19 **FACTUAL ALLEGATIONS**

20 7. Plaintiff started working for the Defendants around November 2004 as a Lift
21 Technician. Plaintiff's most recent title was Patient Care Technician. Throughout his employment
22 with the Defendants he competently performed his job duties.

23 8. On May 5, 2014, Plaintiff suffered an on the job injury to his shoulder while helping
24 move a patient. Plaintiff subsequently filed a workers comp claim.

25 9. On May 6, 2014, Plaintiff saw Dr. Yue Feng who placed him off work during May 6-
26 May 7, 2014, and on modified duties from May 8, 2014 until May 16, 2014. The Defendants,
27 however, did not accommodate Plaintiff and sent him home to wait for recovery, even though
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1 Plaintiff informed the Defendants that he was able to work with some restrictions. Plaintiff was
2 placed on modified duties by his doctor through August 19, 2014.

3 10. On June 5, 2014, Plaintiff had MRI which revealed "slap lesion tear" to his right
4 shoulder. On August 8, 2014, Plaintiff underwent a rotator cuff surgery, and was placed off work by
5 his doctor for recovery until October 19, 2014.

6 11. Plaintiff continuously updated the Defendants of his status by forwarding dropping
7 his doctor's notes at the staffing department, at Kaiser Fremont.

8 12. Plaintiff was released to return to work as of July 17, 2015. After working for one
9 week, Plaintiff realized that he still had pain in his shoulder from performing lift activities. His
10 doctor then placed him on light duties. The Defendants did not provide any light duty to Plaintiff,
11 despite Plaintiff's multiple requests for work shifts.

12 13. On June 15, 2015, Plaintiff moved and updated his address with Kaiser. From that
13 point on, Plaintiff's workers comp documents, and Kaiser information was sent to his new address.

14 14. On December 17, 2015, Plaintiff was terminated for allegedly not providing updated
15 medical documentation regarding his restrictions. As Plaintiff later found out, a number of warning
16 letters requesting updated medical documentation was sent to his old address, even though the
17 Defendants were well aware of, and have been sending correspondence to Plaintiff's new address for
18 months at that time.

19 15. Plaintiff has and continues to suffer loss of wages and other economic and non
20 economic damages.

21
22 **FIRST CAUSE OF ACTION**
23 **DISABILITY DISCRIMINATION IN VIOLATION OF FEHA**

24 16. Plaintiff hereby incorporates by reference paragraphs 1 through 15, as though fully set
25 forth herein.

26 17. At all times material to this complaint, Plaintiff was a person with a disability within
27 the meaning of the FEHA, including shoulder injury, which affected his ability to use his right arm
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1 and perform his job duties.

2 18. Defendant is an employer within the meaning of the FEHA.

3 19. On information and belief, Plaintiff alleges that, during times material here,
4 Defendant violated the FEHA by treating him differently on the basis of his disability, and
5 terminating Plaintiff at least in part because of his disability.

6 20. The effect of the above actions and omissions have been to deprive Plaintiff of equal
7 employment opportunities and otherwise adversely affect his status as an employee because of his
8 disability.

9 21. As a direct and further proximate result of the above violations of her rights under the
10 FEHA, Plaintiff has suffered compensatory damages in the form of past and future wage loss, other
11 pecuniary losses, emotional pain, loss of self-esteem, grief, stress, anxiety, stigma, humiliation,
12 mental anguish, and loss of enjoyment of life in an amount to be proven at trial. The Defendants'
13 acts were done with malice, fraud, and in conscious disregard for his disability rights, because the
14 Defendants knew, at the time of terminating Plaintiff, that Plaintiff was awaiting AME, and it was
15 contemplated that he would be returning to work, but terminated him anyway.

16 22. As a result of the Defendants' unlawful acts, Plaintiff is entitled to compensatory
17 damages, equitable relief, punitive damages and attorney's fees and costs.

18 **SECOND CAUSE OF ACTION**

19 **FAILURE TO ENGAGE IN INTERACTIVE PROCESS IN VIOLATION OF FEHA**

20 23. Plaintiff hereby incorporates by reference paragraphs 1 through 22, as though fully set
21 forth herein.

22 24. At all times material to this complaint, Plaintiff was a person with a disability within
23 the meaning of the FEHA, including shoulder injury.

24 25. Defendant is an employer within the meaning of the FEHA.

25 26. On information and belief, Plaintiff alleges that, during times material here,
26 Defendant violated the FEHA by failing to engage in a good faith, timely interactive process with
27 Plaintiff and/or by causing a break-down in the interactive process by terminating his employment
28

1 while he was waiting AME, being placed on modified duties and / or on medical leave, and planned
2 to return to work.

3 27. The effect of the above actions and omissions have been to deprive Plaintiff of equal
4 employment opportunities and otherwise adversely affect her status as an employee because of his
5 disability, including terminating his employment.

6 28. As a direct and further proximate result of the above violations of his rights under the
7 FEHA, Plaintiff has suffered compensatory damages in the form of past and future wage loss, other
8 pecuniary losses, emotional pain, loss of self-esteem, grief, stress, anxiety, stigma, humiliation,
9 mental anguish, and loss of enjoyment of life in an amount to be proven at trial. The Defendants'
10 acts were done with malice, fraud, and in conscious disregard for his disability rights, because the
11 Defendants knew, at the time of terminating Plaintiff, that he was entitled to reasonable
12 accommodations but terminated him anyway.

13 29. As a result of Defendant's unlawful acts, Plaintiff is entitled to compensatory
14 damages, equitable relief, punitive damages, and attorney's fees and costs.

15 **THIRD CAUSE OF ACTION**

16 **FAILURE TO PROVIDE REASONABLE ACCOMMODATIONS OF FEHA**

17 30. Plaintiff hereby incorporates by reference paragraphs 1 through 29, as though fully set
18 forth herein.

19 31. At all times material to this complaint, Plaintiff was a person with a disability within
20 the meaning of the FEHA, including shoulder injury.

21 32. Defendant is an employer within the meaning of the FEHA.

22 33. On information and belief, Plaintiff alleges that, during times material here,
23 the Defendant violated the FEHA by failing to provide reasonable accommodations to Plaintiff as
24 required by FEHA, when they refused to accommodate his restrictions, place him on light duty, and
25 terminated his employment.

26 34. The effect of the above actions and omissions have been to deprive Plaintiff of equal
27 employment opportunities and otherwise adversely affect his status as an employee because of her
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1 disability.

2 35. As a direct and further proximate result of the above violations of her rights under the
3 FEHA, Plaintiff has suffered compensatory damages in the form of past and future wage loss, other
4 pecuniary losses, emotional pain, loss of self-esteem, grief, stress, anxiety, stigma, humiliation,
5 mental anguish, and loss of enjoyment of life in an amount to be proven at trial. The Defendants' acts
6 were done with malice, fraud, and in conscious disregard for his disability rights, because the
7 Defendants knew, at the time of terminating Plaintiff, that he was entitled to reasonable
8 accommodations at the time of his return from disability leave but terminated him anyway.

9 36. As a result of Defendant's unlawful acts, Plaintiff is entitled to compensatory
10 damages, equitable relief, punitive damages, and attorney's fees and costs.

11
12 **FOURTH CAUSE OF ACTION**
13 **WRONGFUL TERMINATION IN VIOLATION OF PUBLIC POLICY**

14 37. Plaintiff hereby incorporates by reference paragraphs 1 through 36, as though fully set
15 forth herein.

16 38. At all times material to this complaint, Plaintiff was a person with a disability within
17 the meaning of the FEHA, including shoulder injury.

18 39. Defendant is an employer within the meaning of the FEHA.

19 40. On information and belief, Plaintiff alleges that, during times material here,
20 the Defendant violated the FEHA and terminating his employment because of his disability.

21 41. It is a public policy of the State of California to discourage, prevent and remedy
22 workplace discrimination. This policy is embodied in various laws and regulations, including FEHA.

23 42. Plaintiff's termination by the Defendants violated the above-stated public policy,
24 entitling Plaintiff to compensatory damages, and equitable relief.

25 43. The Defendants' acts were done with malice, fraud, and in conscious disregard for his
26 disability rights, because the Defendants knew, at the time of terminating Plaintiff, that he was
27 entitled to reasonable accommodations but terminated him anyway. Therefore, Plaintiff is also
28 entitled to punitive damages.

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PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment against the Defendants as follows:

1. For compensatory damages;
2. For punitive damages;
3. For statutory attorneys' fees and costs of suit, for any applicable interest; and,
4. For such other and further relief as is just and proper.

DATED: March 22, 2016

RESPECTFULLY SUBMITTED,

BY: 

Arkady Itkin
Attorney for Plaintiff
BRANDON BOGUE

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial for each and every claim for which she has a right to a jury trial.

DATED: March 22, 2016

RESPECTFULLY SUBMITTED,

BY: 

Arkady Itkin
Attorney for Plaintiff
BRANDON BOGUE

EXHIBIT A

Courthouse News Service



DEPARTMENT OF FAIR EMPLOYMENT & HOUSING

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www.dfeh.ca.gov | email: contact.center@dfeh.ca.gov

DIRECTOR KEVIN KISH

March 02, 2016

Brandon Bogue
2942 Cheswycke Terrace
Fremont, California 94536

RE: Notice of Case Closure and Right to Sue
DFEH Matter Number: 42986-213649
Right to Sue: Bogue / Kaiser Foundation Hospitals

Dear Brandon Bogue,

This letter informs you that the above-referenced complaint was filed with the Department of Fair Employment and Housing (DFEH) has been closed effective March 02, 2016 because an immediate Right to Sue notice was requested. DFEH will take no further action on the complaint.

This letter is also your Right to Sue notice. According to Government Code section 12965, subdivision (b), a civil action may be brought under the provisions of the Fair Employment and Housing Act against the person, employer, labor organization or employment agency named in the above-referenced complaint. The civil action must be filed within one year from the date of this letter.

To obtain a federal Right to Sue notice, you must visit the U.S. Equal Employment Opportunity Commission (EEOC) to file a complaint within 30 days of receipt of this DFEH Notice of Case Closure or within 300 days of the alleged discriminatory act, whichever is earlier.

Sincerely,

Department of Fair Employment and Housing