

Assigned for all purposes to: Stanley Mosk Courthouse, Judicial Officer: Michael Stern

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Attorneys for Plaintiff
LANCE PAYNE

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES**

LANCE PAYNE, an individual,

Plaintiff,

vs.

KAISER FOUNDATION HOSPITALS, a
California Corporation; KAISER
FOUNDATION HEALTH PLAN, INC., a
California Corporation; THE PERMANENTE
MEDICAL GROUP, INC., a California
Corporation; and DOES 1 through 50,
inclusive,

Defendants.

Case No.

**PLAINTIFF LANCE PAYNE'S
COMPLAINT FOR DAMAGES AND
DEMAND FOR JURY TRIAL**

1. **Wrongful Termination in Violation of Public Policy (Government Code §12940, et seq.);**
2. **Discrimination Based Upon Disability (Government Code §12940, et seq.);**
3. **Failure to Accommodate Disability (Government Code §12940(k) and (m));**
4. **Failure to Engage in the Interactive Process (Government Code §12926.1(e));**
5. **Retaliation in Violation of Public Policy**
6. **Failure to Take All Reasonable Steps to Prevent Discrimination, Harassment and Retaliation (Government Code §12940, et seq.);**
7. **Violation of California Family Rights Act;**
8. **Intentional Infliction of Emotional Distress**

1 **COMES NOW** Plaintiff LANCE PAYNE and alleges as follows:

2 **GENERAL ALLEGATIONS**

3 1. At all relevant times, Plaintiff LANCE PAYNE (hereinafter “Plaintiff”) was and now
4 is an individual residing in the County of LOS ANGELES, State of California.

5 2. That the true name and capacities, whether individual, corporate, or associate, or
6 otherwise of Defendants named herein DOES 1 through 50, inclusive, each of the them are unknown
7 to Plaintiff who therefore sues said Defendants by such fictitious names, and Plaintiff will amend this
8 complaint to state the true names and capacities when the same have been ascertained. Plaintiff is
9 informed and believes and based thereon alleges that each fictitious Defendant designated herein as a
10 DOE was responsible, negligently or in some other actionable manner for the events and happenings
11 referred to herein which proximately caused injury to Plaintiff as hereinafter alleged.

12 3. At all times herein mentioned, Defendant KAISER FOUNDATION HOSPITALS
13 (hereinafter referred to as “KAISER HOSPITALS”) is and was a California Corporation doing
14 business in the state of California at 8120 Woodman Avenue, Panorama City, California, 91402 and,
15 at all relevant times herein, was Plaintiff’s employer. Kaiser Foundation is an “employer” as defined
16 by California Government Code Sections 12926(d), 12940(a) and 12940(j)(4)(A) and employs more
17 than five (5) individuals.

18 4. At all times herein mentioned, Defendant KAISER FOUNDATION HEALTH PLAN,
19 INC. (hereinafter referred to as “KAISER HEALTH PLAN”) is and was a California Corporation
20 doing business in the state of California at 8120 Woodman Avenue, Panorama City, California, 91402
21 and, at all relevant times herein, was Plaintiff’s employer. Kaiser Health Plan is an “employer” as
22 defined by California Government Code Sections 12926(d), 12940(a) and 12940(j)(4)(A) and employs
23 more than five (5) individuals.

24 5. At all times herein mentioned, Defendant THE PERMANENTE MEDICAL GROUP,
25 INC (hereinafter referred to as “PERMANENTE MEDICAL”) is and was a California Corporation
26 doing business in the state of California at 8120 Woodman Avenue, Panorama City, California, 91402
27 and, at all relevant times herein, was Plaintiff’s employer. Permanente Medical is an “employer” as
28 defined by California Government Code Sections 12926(d), 12940(a) and 12940(j)(4)(A) and employs

1 more than five (5) individuals.

2 6. Based on information and believe, Plaintiff contends that Defendant KAISER
3 HOSPITALS, Defendant KAISER HEALTH PLAN and Defendant PERMANENTE MEDICAL are
4 inter-related entities, subsidiaries, or parent companies of one another and at all times were Plaintiff's
5 employer (all three corporate Defendants will be referred to collectively as "Defendants" unless
6 referred to individually).

7 7. Plaintiff further alleges that the employment relationship that gave rise to the
8 allegations set forth herein was entered into in the state of California, and that the subject of said
9 employment relationship was performed in Panorama City and County of Los Angeles. Furthermore,
10 the acts and omissions of Defendants alleged herein occurred in the County of Los Angeles, State of
11 California. As such, venue is proper pursuant to California Code of Civil Procedure section 395.
12 Plaintiff's injuries were incurred within this jurisdiction, and the actions that give rise to this Complaint
13 arose within this jurisdiction. As such, the proper venue is this judicial district.

14 8. Plaintiff is informed and believes and thereon alleges that at all times herein mentioned
15 each of the Defendants were the agents, managers, supervisors and employee of each of the remaining
16 Defendants, and in doing the things hereinafter alleged, were acting within the course and scope of
17 such agency and employment. Plaintiff is informed and believes and based thereon alleges that said
18 unknown Defendants, and each of them, individually and collectively, are responsible for the wrongful
19 acts alleged herein and, therefore, are liable to Plaintiff as alleged herein. Unless otherwise indicated,
20 each Defendant was acting within the course and scope of said agency and/or employment, with the
21 knowledge and/or consent of said co-Defendant.

22 **I.**

23 **JURISDICTION AND VENUE**

24 9. Jurisdiction and venue are proper in this Court because some or all of the claims alleged
25 herein arose in Los Angeles County and some or all of the parties were and/or are residents of Los
26 Angeles County or are doing or did business in Los Angeles County at all times relevant herein.

27 10. The amount in controversy in this matter exceeds the sum of \$25,000.00, exclusive of
28 interest and costs.

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II.

PARTIES

PLAINTIFF:

11. Plaintiff was employed by Defendants from on or about December 2015 until January 18, 2019, when he was wrongfully terminated from his position.

12. During the entirety of his employment with Defendants, Plaintiff fully and satisfactorily performed the duties of Information Technology Project Manager Lead III which is the position he held at the time of his termination. Plaintiff worked at different facilities owned by Defendants included facilities located in Pasadena, Panorama City and Woodland Hills.

CORPORATE DEFENDANTS:

13. Plaintiff is informed and believes and thereon alleges that the corporate Defendants are and at all times mentioned in this complaint, were authorized to operate by the State of California and the United States Government and authorized and qualified to do business in the County of Los Angeles. The Corporate Defendant's primary place of business is One Kaiser Plaza, Oakland California, 94612.

DOE DEFENDANTS:

14. The true names or capacities, whether individual, associate or otherwise, of Doe Defendants 1-50, inclusive, are unknown to Plaintiff and, therefore, Plaintiff sues these Doe Defendants by such fictitious names. Plaintiff will seek leave of this Court to amend this Complaint to allege such names and capacities as soon as they are ascertained. Plaintiff is informed and believes and thereon alleges that each of these fictitiously named Defendants is responsible in some manner for the occurrences alleged herein, and that Plaintiff's injuries and damages as alleged and set forth herein were proximately caused by such fictitiously named Defendants.

AGENCY/CO-CONSPIRATOR STATUS OF EACH DEFENDANT:

15. Each of the individual Defendants is sued individually and in his or her capacity as an agent, representative, manager, supervisor, independent contractor and/or employee of Defendants.

16. Plaintiff is informed and believes and thereon alleges that at all times relevant herein, each and every Defendant, including the Doe Defendants, acted in concert and in furtherance of each

1 other's interest. The acts of the individually named Defendants, as described herein, were known to
2 and ratified by Defendants. The acts and conducts of each and every Defendant as described herein,
3 which were intentional, harassing, and discriminatory were not a normal part of Plaintiff's
4 employment and were not the result of a legitimate business necessity.

5 III.

6 FACTS COMMON TO ALL CAUSES OF ACTION

7 16. Plaintiff LANCE PAYNE, an individual (hereinafter "Plaintiff"), was employed by
8 Defendant KAISER FOUNDATION HOSPITALS, Defendant KAISER FOUNDATION HEALTH
9 PLAN, INC. and Defendant KAISER FOUNDATION HOSPITALS and DOES 1 through 50,
10 inclusive.

11 17. Plaintiff started his employment with Defendants on or around December 2015 when
12 he was placed there through a staffing agency under contract with Defendants. Plaintiff was initially
13 hired as an Information Technology Project Manager Lead II.

14 18. On or about September 2016, Plaintiff was hired directly by Defendants and promoted
15 to serve as an Information Technology Project Manager Lave III. Plaintiff was promoted to this
16 position over other, longer tenured individuals then employed by Defendants and because of his
17 exceptional knowledge of the matter and his managerial skills.

18 19. During his employment Plaintiff regularly worked 60-70 hour workweeks where he
19 oversaw and managed over 100 different projects at various medical centers owned and operated by
20 Defendants.

21 20. During his employment with Defendants, Plaintiff fully and satisfactorily performed
22 the duties of his positions. Plaintiff received exemplary reviews for his performance and received a
23 promotion, increase in salary, additional responsibilities and praise for his work.

24 21. Upon his initial hiring, Plaintiff notified Defendants that he suffered from a
25 degenerative disc disease in his back that sometime caused debilitating back pain. Plaintiff provided
26 his supervisors documentation of his disability and request for accommodation.

27 22. Plaintiff's accommodation was nothing more than a request for an ergonomic office
28 chair that could enable Plaintiff to perform his duties without the aggravating back pain associated

1 with his disability. It took a couple months for this request, but Defendant provided Plaintiff with an
2 ergonomic chair and height-adjustable desk. However, after Plaintiff relocated from Pasadena to the
3 Panorama City Medical Center, it took Defendants six months to provide him with the same ergonomic
4 chair and height-adjustable desk.

5 23. Additionally, Plaintiff requested that he be permitted to sit for 10 to 15 minutes after
6 standing for an hour or more. Plaintiff also requested that he be allowed to stand and stretch his back
7 after prolonged periods of sitting. Defendants initially resisted Plaintiff's requests for these
8 accommodations but eventually conceded.

9 24. Beginning in approximately October 2017, Defendants started reprimanding Plaintiff
10 and writing him up for issues that were unsubstantiated or unwarranted.

11 25. On or about January 2018, Irv Hoff, was assigned to be Plaintiff's new supervisor.
12 Once Mr. Hoff became Plaintiff's supervisor, the harassment and retaliatory conduct grew worse. Mr.
13 Hoff overwhelmed Plaintiff with projects but failed to provide him the necessary assistance and
14 manpower to carry out his assignments all in an effort to force Plaintiff's resignation.

15 26. On or about March 2018, Mr. Hoff relocated Plaintiff's workstation to the other end of
16 the hospital campus away from other team project members Plaintiff had to work with regularly on a
17 daily and continuous basis. Plaintiff complained to Mr. Hoff that the move made it more difficult for
18 Plaintiff to work alongside team members and how detrimental it was to his disc disease. Mr. Hoff
19 did not care or take any corrective action in response to Plaintiff's complaints.

20 27. After Plaintiff was moved to the new work area, Plaintiff would have to take a 10-
21 minute walk to his former workstation simply to oversee and manage the employees he was tasked
22 with supervising. Plaintiff made this walk no less than three to four times a day which exacerbated
23 his existing back pain and issues associated with his Adjustment Disorder.

24 28. On or about September 2018, Plaintiff ordered to undergo a three months Performance
25 Improvement Plan ("PIP") despite the fact Defendants' policy requires employees such as Plaintiff to
26 initially undergo a Corrective Action Plan ("CAP") before subjecting them to a PIP. This did not
27 occur in Plaintiff's situation.

28 29. Plaintiff completed the improvement plan and returned to work. Upon his return to

1 work, the harassment grew even more hostile than before. Several projects Plaintiff had been working
2 on were removed from his team and assigned to other individuals who were not as experienced or
3 knowledgeable as Plaintiff.

4 30. While Plaintiff was in the process of compliance with his PIP, he was diagnosed with
5 Adjustment Disorder. This condition results in debilitating pain in limbs and an inability to function
6 due to the associated anxiety. Plaintiff notified Defendants of this disability and explained how it
7 could affect him physically and emotionally at work. Plaintiff further explained how stressful
8 conditions including irrational and irresponsible expectations placed upon him could trigger these
9 episodes.

10 31. While still completing his PIP, Plaintiff was subjected to such a barrage of harassment
11 and retaliatory conduct that as a result, symptoms associated with Plaintiff's Adjustment Disorder
12 became so incapacitating that he went on medical leave beginning on October 5, 2018.

13 32. Plaintiff was released to return to work on December 26, 2018. However, on his first
14 day back to work, Plaintiff was sent home and told he was being placed on administrative leave
15 because of his failure to complete the PIP while he had been on approved medical leave.

16 33. On January 18, 2019, Plaintiff received a letter from Defendants notifying him of his
17 termination for alleged performance related issues. However, this excuse was a pretext for
18 discrimination and retaliation. The true reason Plaintiff was terminated was due to his disability,
19 because of his request for an accommodation, because he went on medical leave and because he
20 complained of discrimination and retaliation in the workplace. Defendants also terminated Plaintiff
21 in order to avoid engaging in the interactive process and to avoid Plaintiff with an accommodation
22 pursuant to the Fair Employment and Housing Act.

23 34. At all times during his employment, Plaintiff informed Defendants of his disability and
24 provided them with the requisite doctors' notes. When Defendants took the actions they did, Plaintiff
25 was discriminated against due to his disability and Defendants' failure and/or refusal to accommodate
26 his disability.

27 35. Plaintiff filed a claim with the California Department of Fair Employment and Housing
28 ("DFEH"), pursuant to California *Government Code* section 12965(b) and the California Fair

1 Employment and Housing Act (“FEHA”). Plaintiff filed such a claim in a timely fashion and received
2 a “right-to-sue” letter. Attached as Exhibit “A” and incorporated herein by reference is a true and
3 correct copy of the claim against defendants. Plaintiff has thus exhausted all his administrative
4 remedies.

5 **FIRST CAUSE OF ACTION**

6 **WRONGFUL TERMINATION IN VIOLATION OF PUBLIC POLICY**

7 *(Government Code §12940, et seq.)*

8 **(Against Defendants All Defendants and DOES 1-50)**

9 36. The allegations of the preceding paragraphs are realleged and incorporated herein by
10 reference except where to do so would be inconsistent with pleading a cause of action for Wrongful
11 Termination in Violation of Public Policy.

12 37. At all times relevant herein, Defendants were employers as that term is defined in
13 California Government Code section 12926, et seq., and as such, were barred from discriminating in
14 employment decisions.

15 38. Plaintiff alleges that the terms and conditions of his employment and his termination
16 was in violation of the public policy of the State of California which specifically prohibits Defendants
17 from discriminating against Plaintiff on the basis of his disability. Plaintiff was disabled as that term
18 is defined by the Government Code and a protected person. Defendants did discriminate against
19 Plaintiff on the basis of his disability.

20 39. Defendants violated that public policy by discriminating against and terminating
21 Plaintiff on the basis of his disability.

22 40. The above acts of Defendants constituted a wrongful termination of Plaintiff and was
23 in violation of public policy as described above. Such termination was a substantial factor in causing
24 damage and injury to Plaintiff as set forth below.

25 41. As a proximate result of the aforesaid acts of Defendants, Plaintiff has foreseeably
26 suffered and continues to suffer substantial loss of earnings and employment benefits in an amount
27 according to proof at the time of trial. Plaintiff claims such amount as damages together with
28 prejudgment interest pursuant to Government Code section 12940, et seq., and/or any other provision

1 of law providing for prejudgment interest.

2 42. Plaintiff further has incurred additional expenses in his efforts to regain employment,
3 all to his damage in an amount according to proof at the time of trial.

4 43. As a direct and proximate result of the aforementioned wrongful conduct of
5 Defendants, Plaintiff will suffer additional loss of earnings, reduced earning capacity in the future, and
6 other incidental and consequential damages in an amount according to proof at the time of trial.

7 44. Plaintiff incurred expenses herein for necessary and reasonable attorneys' fees in order
8 to enforce his rights and to obtain benefits due him, all to his further damage in an amount according
9 to proof.

10 45. As a proximate result of the conduct complained of herein, Plaintiff suffered and
11 continues to suffer embarrassment, humiliation, emotional distress, mental anguish and severe shock
12 to his nervous system, and thereby sustained serious injuries to his physical and mental health, strength
13 and activity, causing him extreme physical and emotional pain, all to his general damage in such
14 amount as may be proven. Said amount is within the jurisdiction of the Superior Court of the State of
15 California.

16 46. As a direct and proximate result of the aforementioned wrongful conduct of
17 Defendants, Plaintiff incurred medical expenses, the exact nature and extent of which are unknown to
18 Plaintiff at this time and Plaintiff will ask leave of court to amend this complaint in this regard when
19 the same have been ascertained.

20 47. As a direct and proximate result of the aforementioned wrongful conduct of
21 Defendants, Plaintiff will be required to incur additional future medical expenses all to his further
22 damage in an amount to be proven at trial.

23 48. Because the acts taken toward Plaintiff were carried out in a deliberate, cold, callous
24 and intentional manner in order to injure and damage Plaintiff, Plaintiff requests the assessment of
25 punitive damages against Defendants in an amount appropriate to punish and make an example of
26 Defendants.

1 **SECOND CAUSE OF ACTION**

2 **DISCRIMINATION BASED UPON DISABILITY**

3 *(Government Code §12940, et seq.)*

4 **(Against All Defendants and DOES 1-50)**

5 49. The allegations of the preceding paragraphs are realleged and incorporated herein by
6 reference except where to do so would be inconsistent with pleading a cause of action for
7 Discrimination Based Upon Disability.

8 50. FEHA prohibits disability discrimination in employment. FEHA additionally requires
9 an employer which learns about discrimination to conduct an immediate and effective investigation
10 and to provide remedies if needed.

11 51. Plaintiff suffered from a disability and, as such, is a member of a class protected from
12 disability discrimination under California law.

13 52. When Defendants engaged in the acts of discrimination alleged in this Complaint, they
14 treated Plaintiff adversely because of his disability.

15 53. In doing the acts referenced above, Defendants failed to accommodate Plaintiff's
16 disability and in doing so Defendants violated their affirmative duty to Plaintiff.

17 54. As a proximate result of the aforesaid acts of Defendants, Plaintiff has foreseeably
18 suffered and continues to suffer substantial loss of earnings and employment benefits in an amount
19 according to proof at the time of trial. Plaintiff claims such amount as damages together with
20 prejudgment interest pursuant to Government Code section 12945, et seq., and/or any other provision
21 of law providing for prejudgment interest.

22 55. Plaintiff further has incurred additional expenses in his efforts to regain employment,
23 all to his damage in an amount according to proof at the time of trial.

24 56. As a direct and proximate result of the aforementioned wrongful conduct of
25 Defendants, Plaintiff will suffer additional loss of earnings, reduced earning capacity in the future, and
26 other incidental and consequential damages in an amount according to proof at the time of trial.

27 57. Plaintiff incurred expenses herein for necessary and reasonable attorneys' fees in order
28 to enforce his rights and to obtain benefits due him, all to his further damage in an amount according

1 to proof.

2 58. As a proximate result of the conduct complained of herein, Plaintiff suffered and
3 continues to suffer embarrassment, humiliation, emotional distress, mental anguish and severe shock
4 to his nervous system, and thereby sustained serious injuries to his physical and mental health, strength
5 and activity, causing him extreme physical and emotional pain, all to his general damage in such
6 amount as may be proven. Said amount is within the jurisdiction of the Superior Court of the State of
7 California.

8 59. As a direct and proximate result of the aforementioned wrongful conduct of
9 Defendants, Plaintiff incurred medical expenses, the exact nature and extent of which are unknown to
10 Plaintiff at this time and Plaintiff will ask leave of court to amend this complaint in this regard when
11 the same have been ascertained.

12 60. As a direct and proximate result of the aforementioned wrongful conduct of
13 Defendants, Plaintiff will be required to incur additional future medical expenses all to his further
14 damage in an amount to be proven at trial.

15 61. Because the acts taken toward Plaintiff were carried out in a deliberate, cold, callous
16 and intentional manner in order to injure and damage Plaintiff, Plaintiff requests the assessment of
17 punitive damages against Defendants in an amount appropriate to punish and make an example of
18 Defendants.

19 **THIRD CAUSE OF ACTION**

20 **FAILURE TO ACCOMMODATE DISABILITY**

21 *(Government Code §12940(k) and (m))*

22 **(Against All Defendants and DOES 1-50)**

23 62. The allegations of the preceding paragraphs are realleged and incorporated herein by
24 reference except where to do so would be inconsistent with pleading a cause of action for Failure to
25 Accommodate Disability.

26 63. Government Code sections 12940(k) and (m) require an employer to provide
27 reasonable accommodations to employees with known physical disabilities. An employer also has an
28 affirmative duty to inform disabled individuals of other job opportunities, and ascertain whether the

1 employee is interested in, or qualified for said positions.

2 64. Defendants independently violated the FEHA by refusing to accommodate Plaintiff's
3 disability or perceived disability, by repeatedly not adhering to requested accommodations, by
4 refusing to respond to Plaintiff's requests, and by other conduct according to proof.

5 65. In doing the acts referenced above, Defendants failed to accommodate Plaintiff's
6 disability and in doing so Defendants violated their affirmative duty to Plaintiff.

7 66. As a proximate result of the aforesaid acts of Defendants, Plaintiff has foreseeably
8 suffered and continues to suffer substantial loss of earnings and employment benefits in an amount
9 according to proof at the time of trial. Plaintiff claims such amount as damages together with
10 prejudgment interest pursuant to Government Code section 12945, et seq., and/or any other provision
11 of law providing for prejudgment interest.

12 67. Plaintiff further has incurred additional expenses in his efforts to regain employment,
13 all to his damage in an amount according to proof at the time of trial.

14 68. As a direct and proximate result of the aforementioned wrongful conduct of
15 Defendants, Plaintiff will suffer additional loss of earnings, reduced earning capacity in the future, and
16 other incidental and consequential damages in an amount according to proof at the time of trial.

17 69. Plaintiff incurred expenses herein for necessary and reasonable attorneys' fees in order
18 to enforce his rights and to obtain benefits due him, all to his further damage in an amount according
19 to proof.

20 70. As a proximate result of the conduct complained of herein, Plaintiff suffered and
21 continues to suffer embarrassment, humiliation, emotional distress, mental anguish and severe shock
22 to his nervous system, and thereby sustained serious injuries to his physical and mental health, strength
23 and activity, causing him extreme physical and emotional pain, all to his general damage in such
24 amount as may be proven. Said amount is within the jurisdiction of the Superior Court of the State of
25 California.

26 71. As a direct and proximate result of the aforementioned wrongful conduct of
27 Defendants, Plaintiff incurred medical expenses, the exact nature and extent of which are unknown to
28 Plaintiff at this time and Plaintiff will ask leave of court to amend this complaint in this regard when

1 the same have been ascertained.

2 72. As a direct and proximate result of the aforementioned wrongful conduct of
3 Defendants, Plaintiff will be required to incur additional future medical expenses all to his further
4 damage in an amount to be proven at trial.

5 73. Because the acts taken toward Plaintiff were carried out in a deliberate, cold, callous
6 and intentional manner in order to injure and damage Plaintiff, Plaintiff requests the assessment of
7 punitive damages against Defendants in an amount appropriate to punish and make an example of
8 Defendants.

9 **FOURTH CAUSE OF ACTION**

10 **FAILURE TO ENGAGE IN THE INTERACTIVE PROCESS**

11 *(Government Code §12926.1(e))*

12 **(Against All Defendants and DOES 1-50)**

13 74. The allegations of the preceding paragraphs are realleged and incorporated herein by
14 reference except where to do so would be inconsistent with pleading a cause of action for Failure to
15 Engage in the Interactive Process.

16 75. Government Code sections 12940(n) and 12926.1(e) require an employer to engage in
17 a timely, good faith, interactive process with the employee to determine effective reasonable
18 accommodations, if any, in response to a request for reasonable accommodation by an employee with
19 a known physical or mental disability or know medical condition. It is a violation of FEHA to fail to
20 engage in a timely, good faith interactive process.

21 76. Defendants independently violated the FEHA by refusing to engage in the interactive
22 process, by refusing to accommodate Plaintiff's disability or perceived disability, by repeatedly not
23 adhering to requested accommodations, by refusing to respond to Plaintiff's requests, and by other
24 conduct according to proof.

25 77. In doing the acts referenced above, Defendants failed to accommodate Plaintiff's
26 disability and in doing so Defendants violated their affirmative duty to Plaintiff.

27 78. As a proximate result of the aforesaid acts of Defendants, Plaintiff has foreseeably
28 suffered and continues to suffer substantial loss of earnings and employment benefits in an amount

1 according to proof at the time of trial. Plaintiff claims such amount as damages together with
2 prejudgment interest pursuant to Government Code section 12945, et seq., and/or any other provision
3 of law providing for prejudgment interest.

4 79. Plaintiff further has incurred additional expenses in his efforts to regain employment,
5 all to his damage in an amount according to proof at the time of trial.

6 80. As a direct and proximate result of the aforementioned wrongful conduct of
7 Defendants, Plaintiff will suffer additional loss of earnings, reduced earning capacity in the future, and
8 other incidental and consequential damages in an amount according to proof at the time of trial.

9 81. Plaintiff incurred expenses herein for necessary and reasonable attorneys' fees in order
10 to enforce his rights and to obtain benefits due him, all to his further damage in an amount according
11 to proof.

12 82. As a proximate result of the conduct complained of herein, Plaintiff suffered and
13 continues to suffer embarrassment, humiliation, emotional distress, mental anguish and severe shock
14 to his nervous system, and thereby sustained serious injuries to his physical and mental health, strength
15 and activity, causing him extreme physical and emotional pain, all to his general damage in such
16 amount as may be proven. Said amount is within the jurisdiction of the Superior Court of the State of
17 California.

18 83. As a direct and proximate result of the aforementioned wrongful conduct of
19 Defendants, Plaintiff incurred medical expenses, the exact nature and extent of which are unknown to
20 Plaintiff at this time and Plaintiff will ask leave of court to amend this complaint in this regard when
21 the same have been ascertained.

22 84. As a direct and proximate result of the aforementioned wrongful conduct of
23 Defendants, Plaintiff will be required to incur additional future medical expenses all to his further
24 damage in an amount to be proven at trial.

25 85. Because the acts taken toward Plaintiff were carried out in a deliberate, cold, callous
26 and intentional manner in order to injure and damage Plaintiff, Plaintiff requests the assessment of
27 punitive damages against Defendants in an amount appropriate to punish and make an example of
28 Defendants.

1 **FIFTH CAUSE OF ACTION**

2 **RETALIATION**

3 *(Government Code §12940, et seq.)*

4 **(Against All Defendants and DOES 1-50)**

5 86. The allegations of the preceding paragraphs are realleged and incorporated herein by
6 reference except where to do so would be inconsistent with pleading a cause of action for Retaliation.

7 87. At all times relevant herein, Defendants, and each of them, were employers as that term
8 is defined in California Government Code section 12926, et seq., and as such, were barred from
9 retaliating in employment decisions.

10 88. Plaintiff rejected illegal activity, i.e., discrimination and harassment. When Plaintiff
11 rejected the discrimination, he was engaged in a protected activity. Furthermore, Plaintiff complained
12 to his supervisors about Defendants' retaliatory conduct, failure to accommodate him or comply with
13 his workplace restrictions Plaintiff was engaged in a protected activity. Additionally, Plaintiff
14 requested and exercised his right to leave pursuant to the CFRA and was subsequently punished for
15 exercising his right to medical leave. Therefore, Plaintiff was engaged in a protected activity when he
16 complained about the mistreatment and other illegal conduct.

17 89. After engaging in this protected activity, Defendants, and each of them, engaged in acts
18 of retaliation as alleged in this complaint, including, but not limited to, terminating Plaintiff.

19 90. In doing the acts referenced above, Defendants violated their affirmative duty to
20 Plaintiff.

21 91. The above acts of Defendants and each of them caused Plaintiff severe emotional
22 distress, anxiety, sleeplessness, and were outrageous and beyond the scope of his employment. As a
23 direct, proximate and foreseeable result of the aforesaid conduct of the Defendants, and each of them,
24 Plaintiff has suffered damages and injuries set forth below.

25 92. As a result of the aforesaid acts of Defendants, Plaintiff has become mentally upset,
26 distressed and aggravated. Plaintiff claims general damages for such mental distress and aggravation
27 in an amount of which will be proven at time of trial.

28 93. Plaintiff incurred expenses herein for necessary and reasonable attorneys' fees in order

1 to enforce his rights and to obtain benefits due him, all to his further damage in an amount according
2 to proof.

3 94. As a proximate result of the conduct complained of herein, Plaintiff suffered and
4 continues to suffer embarrassment, humiliation, emotional distress, mental anguish and severe shock
5 to his nervous system, and thereby sustained serious injuries to his physical and mental health, strength
6 and activity, causing him extreme physical and emotional pain, all to his general damage in such
7 amount as may be proven. Said amount is within the jurisdiction of the Superior Court of the State of
8 California.

9 95. As a direct and proximate result of the aforementioned wrongful conduct of
10 Defendants, and each of them, Plaintiff incurred medical expenses, the exact nature and extent of
11 which are unknown to Plaintiff at this time and Plaintiff will ask leave of court to amend this complaint
12 in this regard when the same have been ascertained.

13 96. As a direct and proximate result of the aforementioned wrongful conduct of
14 Defendants, and each of them, Plaintiff will be required to incur additional future medical expenses
15 all to his further damage in an amount to be proven at trial.

16 97. Because the acts taken toward Plaintiff were carried out in a deliberate, cold, callous
17 and intentional manner in order to injure and damage Plaintiff, Plaintiff requests the assessment of
18 punitive damages against Defendants, and each of them, in an amount appropriate to punish and make
19 an example of Defendants.

20 **SIXTH CAUSE OF ACTION**

21 **FAILURE TO TAKE ALL REASONABLE STEPS**

22 **TO PREVENT DISCRIMINATION, HARASSMENT AND RETALIATION**

23 *(Government Code §12940, et seq.)*

24 **(Against All Defendants and DOES 1-50)**

25 98. The allegations of the preceding paragraphs are realleged and incorporated herein by
26 reference except where to do so would be inconsistent with pleading a cause of action for Failure to
27 Take All Reasonable Steps to Prevent Discrimination, Harassment and Retaliation.

28 99. Government Code section 12940 et seq., including but not limited to Government Code

1 section 12940(j)(1), provides that it is an unlawful employment practice for an employer, because of
2 the person's disability, to discriminate against an employee and retaliate against him or her. An entity
3 shall take all reasonable steps to prevent the discrimination and retaliation from occurring.

4 100. The facts alleged above constitute violations of FEHA in that Defendants, and each of
5 them, subjected Plaintiff to discrimination. Plaintiff alleges that Defendants' discrimination against
6 Plaintiff and ongoing harassment was an unlawful employment practice. Defendants also engaged in
7 acts of retaliation as alleged in this complaint. Defendants, and each of them, failed to take all
8 reasonable steps necessary to prevent discrimination, harassment and retaliation from occurring in
9 violation of Government Code section 12940(j)(1) of the Fair Employment and Housing Act.

10 101. As a proximate result of the aforesaid acts of Defendants, Plaintiff has foreseeably
11 suffered and continues to suffer substantial loss of earnings and employment benefits in an amount
12 according to proof at the time of trial. Plaintiff claims such amount as damages together with
13 prejudgment interest pursuant to Government Code section 12945, et seq. and/or any other provision
14 of law providing for prejudgment interest.

15 102. Plaintiff further has incurred additional expenses in his efforts to regain employment,
16 all to his damage in an amount according to proof at the time of trial.

17 103. As a direct and proximate result of the aforementioned wrongful conduct of
18 Defendants, and each of them, Plaintiff will suffer additional loss of earnings, reduced earning capacity
19 in the future, and other incidental and consequential damages in an amount according to proof at the
20 time of trial.

21 104. Plaintiff incurred expenses herein for necessary and reasonable attorneys' fees in order
22 to enforce his rights and to obtain benefits due him, all to his further damage in an amount according
23 to proof.

24 105. As a proximate result of the conduct complained of herein, Plaintiff suffered and
25 continues to suffer embarrassment, humiliation, emotional distress, mental anguish and severe shock
26 to his nervous system, and thereby sustained serious injuries to his physical and mental health, strength
27 and activity, causing him extreme physical and emotional pain, all to his general damage in such
28 amount as may be proven. Said amount is within the jurisdiction of the Superior Court of the State of

1 California.

2 106. As a direct and proximate result of the aforementioned wrongful conduct of
3 Defendants, and each of them, Plaintiff incurred medical expenses, the exact nature and extent of
4 which are unknown to Plaintiff at this time and Plaintiff will ask leave of court to amend this complaint
5 in this regard when the same have been ascertained.

6 107. As a direct and proximate result of the aforementioned wrongful conduct of
7 Defendants, and each of them, Plaintiff will be required to incur additional future medical expenses
8 all to his further damage in an amount to be proven at trial.

9 108. Because the acts taken toward Plaintiff were carried out in a deliberate, cold, callous
10 and intentional manner in order to injure and damage Plaintiff, Plaintiff requests the assessment of
11 punitive damages against Defendants, and each of them, in an amount appropriate to punish and make
12 an example of Defendants.

13 **SEVENTH CAUSE OF ACTION**

14 **VIOLATION OF CALIFORNIA FAMILY RIGHTS ACT**

15 **(Against All Defendants and DOES 1-50)**

16 109. The allegations of the Statement of Facts and preceding paragraphs are realleged and
17 incorporated herein by reference except where to do so would be inconsistent with pleading a cause
18 of action for Violation of California Family Rights Act.

19 110. The California Family Rights Act (“CFRA”) was established to ensure secure leave
20 rights for the following: (a) birth of a child for purposes of bonding; (b) placement of a child in the
21 employee’s family for adoption or foster care; (c) for the serious health condition of the employee’s
22 child, parent or spouse; (d) or for the employee’s own serious health condition.

23 111. At all times mentioned herein, Defendants were covered employers as that term is
24 defined by law within the CFRA.

25 112. At all times mentioned herein, Plaintiff was an eligible employee as that term is defined
26 by law within the CFRA.

27 113. At all times mentioned herein, Plaintiff suffered from a serious health condition.

28 114. At all times mentioned herein, Plaintiff qualified for leave under the CFRA for his

1 medical condition. After requesting such leave, Defendants retaliated against Plaintiff and terminated
2 him.

3 115. Defendants' actions constituted a violation of the CFRA.

4 116. The above acts of Defendants caused Plaintiff severe emotional distress, anxiety,
5 sleeplessness, and were outrageous and beyond the scope of his employment. As a direct, proximate
6 and foreseeable result of the aforesaid conduct of the defendants, Plaintiff has suffered damages and
7 injuries set forth below.

8 117. As a result of the aforesaid acts of defendants, Plaintiff has become mentally upset,
9 distressed and aggravated. Plaintiff claims general damages for such mental distress and aggravation
10 in an amount of which will be proven at time of trial.

11 118. As a proximate result of the aforesaid acts of Defendants, Plaintiff has foreseeably
12 suffered and continues to suffer substantial loss of earnings and employment benefits in an amount
13 according to proof at the time of trial. Plaintiff claims such amount as damages together with
14 prejudgment interest.

15 119. Plaintiff further has incurred additional expenses in his efforts to regain employment,
16 all to his damage in an amount according to proof at the time of trial.

17 120. As a direct and proximate result of the aforementioned wrongful conduct of
18 Defendants, and each of them, Plaintiff will suffer additional loss of earnings, reduced earning capacity
19 in the future, and other incidental and consequential damages in an amount according to proof at the
20 time of trial.

21 121. Plaintiff incurred expenses herein for necessary and reasonable attorneys' fees in order
22 to enforce his rights and to obtain benefits due him, all to his further damage in an amount according
23 to proof.

24 122. As a proximate result of the conduct complained of herein, Plaintiff suffered and
25 continues to suffer embarrassment, humiliation, emotional distress, mental anguish and severe shock
26 to his nervous system, and thereby sustained serious injuries to his physical and mental health, strength
27 and activity, causing him extreme physical and emotional pain, all to his general damage in such
28 amount as may be proven. Said amount is within the jurisdiction of the Superior Court of the State of

1 California.

2 123. As a direct and proximate result of the aforementioned wrongful conduct of
3 Defendants, and each of them, Plaintiff incurred medical expenses, the exact nature and extent of
4 which are unknown to Plaintiff at this time and plaintiff will ask leave of court to amend this complaint
5 in this regard when the same have been ascertained.

6 124. As a direct and proximate result of the aforementioned wrongful conduct of
7 Defendants, and each of them, Plaintiff will be required to incur additional future medical expenses
8 all to his further damage in an amount to be proven at trial.

9 125. Because the acts taken toward Plaintiff were carried out in a deliberate, cold, callous
10 and intentional manner in order to injure and damage Plaintiff, Plaintiff requests the assessment of
11 punitive damages against Defendants, and each of them, in an amount appropriate to punish and make
12 an example of Defendants.

13 **EIGHTH CAUSE OF ACTION**

14 **INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS**

15 **(Against all Defendants and DOES 1-50)**

16 126. The allegations of the preceding paragraphs are realleged and incorporated herein by
17 reference except where to do so would be inconsistent with pleading a cause of action for Intentional
18 Infliction of Emotional Distress.

19 127. When Defendants did the acts described in this complaint, they engaged in extreme and
20 outrageous conduct. They did such acts deliberately, intentionally and recklessly so as to cause
21 Plaintiff severe emotional distress. Defendants' conduct in confirming and ratifying that conduct was
22 done with knowledge that Plaintiff's distress would thereby increase and was done with wanton and
23 reckless disregard of the consequences to Plaintiff.

24 128. The above acts of Defendants caused Plaintiff severe emotional distress, anxiety,
25 sleeplessness, and were outrageous and beyond the scope of his employment. As a direct, proximate
26 and foreseeable result of the aforesaid conduct of the Defendants, Plaintiff has suffered damages and
27 injuries set forth below.

28 129. As a result of the aforesaid acts of Defendants, Plaintiff has become mentally upset,

1 distressed and aggravated. Plaintiff claims general damages for such mental distress and aggravation
2 in an amount of which will be proven at time of trial.

3 130. As a proximate result of the aforesaid acts of Defendants, Plaintiff has foreseeably
4 suffered and continues to suffer substantial loss of earnings and employment benefits in an amount
5 according to proof at the time of trial. Plaintiff claims such amount as damages together with
6 prejudgment interest.

7 131. Plaintiff further has incurred additional expenses in his efforts to regain employment,
8 all to his damage in an amount according to proof at the time of trial.

9 132. As a direct and proximate result of the aforementioned wrongful conduct of
10 Defendants, and each of them, Plaintiff will suffer additional loss of earnings, reduced earning capacity
11 in the future, and other incidental and consequential damages in an amount according to proof at the
12 time of trial.

13 133. As a proximate result of the conduct complained of herein, Plaintiff suffered and
14 continues to suffer embarrassment, humiliation, emotional distress, mental anguish and shock to his
15 nervous system, and thereby sustained serious injuries to his physical and mental health, causing him
16 extreme physical and emotional pain, all to his general damage in such amount as may be proven.
17 Said amount is within the jurisdiction of the Superior Court of the State of California.

18 134. As a direct and proximate result of the aforementioned wrongful conduct of
19 Defendants, and each of them, Plaintiff incurred medical expenses, the exact nature and extent of
20 which are unknown to Plaintiff at this time and Plaintiff will ask leave of court to amend this complaint
21 in this regard when the same have been ascertained

22 135. As a direct and proximate result of the aforementioned wrongful conduct of
23 Defendants, and each of them, Plaintiff will be required to incur additional future medical expenses
24 all to his further damage in an amount to be proven at trial.

25 136. Because the acts taken toward Plaintiff were carried out in a deliberate, cold, callous
26 and intentional manner in order to injure and damage Plaintiff, Plaintiff requests the assessment of
27 punitive damages against Defendants, and each of them, in an amount appropriate to punish and make
28 an example of Defendants.

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PRAYER

WHEREFORE, Plaintiff prays for judgment against Defendants as follows:

1. For compensatory damages including losses arising from mental and emotional distress and other special and general damages, as allowed by law, for an amount in excess of \$50,000 and according to proof at trial;
2. For an award of punitive damages as allowed by law;
3. For medical and related expenses, as allowed by law, for an amount in excess of \$50,000 and according to proof at trial;
4. For lost earnings and related expenses, as allowed by law, for an amount in excess of \$50,000 and according to proof at trial;
5. For attorneys' fees and costs, as allowed by law;
6. For prejudgment interest on all amounts claimed, as permitted by law; and
7. For such other and further relief as the Court deems just and proper.

Dated: June 5, 2019

JAY S. ROTHMAN & ASSOCIATES

O. David Natanzi

 JAY S. ROTHMAN
 O. DAVID NATANZI
 Attorneys for Plaintiff LANCE PAYNE

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial by jury of the foregoing causes of action.

Dated: June 5, 2019

JAY S. ROTHMAN & ASSOCIATES

O. David Natanzi

 JAY S. ROTHMAN
 O. DAVID NATANZI
 Attorneys for Plaintiff LANCE PAYNE

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EXHIBIT A



DEPARTMENT OF FAIR EMPLOYMENT & HOUSING

KEVIN KISH, DIRECTOR

2218 Kausen Drive, Suite 100 | Elk Grove | CA | 95758
(800) 884-1684 (Voice) | (800) 700-2320 (TTY) | California's Relay Service at 711
<http://www.dfeh.ca.gov> | Email: contact.center@dfeh.ca.gov

May 20, 2019

O. David Natanzi
21900 Burbank Blvd. 210
Woodland Hills, California 91367

RE: **Notice to Complainant's Attorney**
DFEH Matter Number: 201905-06012502
Right to Sue: Payne / Kaiser Foundation Health Plan, Inc.

Dear O. David Natanzi:

Attached is a copy of your **amended** complaint of discrimination filed with the Department of Fair Employment and Housing (DFEH) pursuant to the California Fair Employment and Housing Act, Government Code section 12900 et seq.

Pursuant to Government Code section 12962, DFEH will not serve these documents on the employer. You or your client must serve the complaint.

The amended complaint is deemed to have the same filing date of the original complaint. This is not a new Right to Sue letter. The original Notice of Case Closure and Right to Sue issued in this case remains the only such notice provided by the DFEH. (Cal. Code Regs., tit. 2, § 10022.)

Be advised that the DFEH does not review or edit the complaint form to ensure that it meets procedural or statutory requirements.

Sincerely,

Department of Fair Employment and Housing

1 **Complainant was harassed** because of complainant's family care or medical leave
2 (cfra) (employers of 50 or more people), disability (physical or mental), medical
condition (cancer or genetic characteristic), other.

3 **Complainant was discriminated against** because of complainant's family care or
4 medical leave (cfra) (employers of 50 or more people), disability (physical or mental),
5 medical condition (cancer or genetic characteristic) and as a result of the
6 discrimination was terminated, reprimanded, suspended, denied a work environment
free of discrimination and/or retaliation, denied reasonable accommodation for a
disability, other, denied work opportunities or assignments.

7 **Complainant experienced retaliation** because complainant reported or resisted
8 any form of discrimination or harassment, requested or used a disability-related
9 accommodation, requested or used leave under the california family rights act or
10 fmla (employers of 50 or more people) and as a result was terminated, reprimanded,
11 suspended, denied a work environment free of discrimination and/or retaliation,
denied reasonable accommodation for a disability, other.

12 **Additional Complaint Details:** Complainant Lance Payne started his employment
13 with Respondents on or about December 2015. Complainant was initially hired on a
14 contract basis through a third party vendor and then hired directly in September
2016 by Respondents. Mr. Payne was an IT Project Manager Level 3 at the time of
his termination on January 18, 2019.

15 Shortly after he was hired, Mr. Payne notified Respondents that he suffered from a
16 degenerative disc disease in his back that would require an accommodation.
17 Additionally, Mr. Payne has been diagnosed with Adjustment Disorder which results
18 in debilitating pain in limbs and an inability to function due to the associated anxiety.
Respondents were aware of this disability as well.

19 Complainant provided documentation of his disability and requests for
20 accommodation. Respondents initially balked at his request for accommodation but
eventually provided him with his requested accommodations.

21 Beginning in approximately October 2017, Respondents started reprimanding
22 Complainant and writing him for reasons that were unsubstantiated or unwarranted.
23 Around that same time period, Irv Hoff, was assigned to be Mr. Payne's new
supervisor. Once Mr. Hoff became his new supervisor, the harassment and
retaliatory conduct grew worse.

24 In September 2018, Mr. Payne was ordered to undergo a three week improvement
25 performance plan. Mr. Payne completed the improvement plan and returned to
26 work. However, the harassment grew even more hostile than before. As a result,

1 symptoms associated with Mr. Payne's adjustment disorder became so
2 incapacitating that he went on medical leave beginning on October 5, 2018.

3 Mr. Payne was released to return to work on December 26, 2018. He went back to
4 work and on his first day back he was sent home and told he was being placed on
5 administrative leave. On January 18, 2019, Mr. Payne received a letter indicating he
6 was terminated due to poor performance.
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1 VERIFICATION

2 I, **O. David Natanzi**, am the **Attorney** in the above-entitled complaint. I have read the
3 foregoing complaint and know the contents thereof. The matters alleged are based
4 on information and belief, which I believe to be true.

5 On May 20, 2019, I declare under penalty of perjury under the laws of the State of
6 California that the foregoing is true and correct.

7 **Woodland Hills, CA**

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