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Joseph Allen

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

JOSEPH ALLEN, an individual,
Plaintiff,

v.

COUNTY OF LOS ANGELES; COUNTY OF
LOS ANGELES FIRE DEPARTMENT; and
DOES 1 through 20, inclusive,
Defendants.

Case No. **22STCV25330**

COMPLAINT FOR DAMAGES FOR:

- 1. DISCRIMINATION (DISPARATE TREATMENT) IN VIOLATION OF GOV'T CODE §§12940 ET SEQ.;**
- 2. DISCRIMINATION (DISPARATE IMPACT) IN VIOLATION OF GOV'T CODE §§12940 ET SEQ.**
- 3. HARASSMENT IN VIOLATION OF GOV'T CODE §§12940 ET SEQ.;**
- 4. FAILURE TO PREVENT DISCRIMINATION AND HARASSMENT IN VIOLATION OF GOV'T CODE §12940(k);**
- 5. FAILURE TO PROVIDE REASONABLE ACCOMMODATIONS IN VIOLATION OF GOV'T CODE §§12940 ET SEQ.;**
- 6. FAILURE TO ENGAGE IN A GOOD FAITH INTERACTIVE PROCESS IN VIOLATION OF GOV'T CODE §§12940 ET SEQ.;**

DEMAND OVER \$25,000

[DEMAND FOR JURY TRIAL]

1 COMES NOW PLAINTIFF, JOSEPH ALLEN, and for causes of action against the
2 Defendants and each of them, alleges as follows:

3 **JURISDICTION**

4 1. This Court is the proper court, and this action is properly filed in the County of Los
5 Angeles, because Defendants' obligations and liability arise therein, because Defendants maintain offices
6 and transact business within the County of Los Angeles County, and because the work that is the subject
7 of this action was performed by Plaintiff in the County of Los Angeles.

8
9 **THE PARTIES**

10 2. Plaintiff, JOSEPH ALLEN (hereinafter "Plaintiff" and "Mr. Allen"), is and at all times
11 relevant hereto was a resident of the County of Los Angeles, State of California.

12 3. Plaintiff is informed and believes, and based thereupon alleges, that at all times relevant
13 hereto, Defendant COUNTY OF LOS ANGELES (hereinafter referred to as "the COUNTY") was and is
14 a public entity with its principal place of business located at in the County of Los Angeles, State of
15 California.

16 4. Plaintiff is informed and believes, and based thereupon alleges, that at all times relevant
17 hereto, Defendant COUNTY OF LOS ANGELES FIRE DEPARTMENT (hereinafter referred to as "the
18 DEPARTMENT") was and is a public sector organization providing public services with its principal
19 place of business located at 1320 N. Eastern Avenue, Los Angeles, California 90063 in the County of
20 Los Angeles.

21 5. Defendant the COUNTY operates the DEPARTMENT.

22 6. The COUNTY and the DEPARTMENT are hereinafter collectively referred to as
23 "Employers."

24 7. At all times relevant herein, Employers and DOES 1-20 were Plaintiff's employers, joint
25 employers and/or special employers within the meaning of Government Code §§12926, subdivision (d),
26 12940, subdivisions (a),(h),(1), (h)(3)(A), and (i), and 12950, and regularly employ five (5) or more
27 persons and are therefore subject to the jurisdiction of this Court.

28 ///

1 8. The true names and capacities, whether individual, corporate, associate, or otherwise, of
2 the Defendants named herein as DOES 1-20, inclusive, are unknown to Plaintiff at this time and therefore
3 said Defendants are sued by such fictitious names. Plaintiff will seek leave to amend this complaint to
4 insert the true names and capacities of said Defendants when the same becomes known to Plaintiff.
5 Plaintiff is informed and believes, and based thereupon alleges, that each of the fictitiously named
6 Defendants is responsible for the wrongful acts alleged herein and is therefore liable to Plaintiff as alleged
7 hereinafter.

8 9. Plaintiff is informed and believes, and based thereupon alleges, that at all times relevant
9 hereto, Defendants, and each of them, were the agents, employees, managing agents, supervisors,
10 coconspirators, parent corporation, joint employers, alter egos, successors, and/or joint ventures of the
11 other Defendants, and each of them, and in doing the things alleged herein, were acting at least in part
12 within the course and scope of said agency, employment, conspiracy, joint employer, alter ego status,
13 successor status and/or joint venture and with the permission and consent of each of the other Defendants.

14 10. Plaintiff is informed and believes, and based thereupon alleges, that Defendants, and each
15 of them, including those defendants named as DOES 1-20, acted in concert with one another to commit
16 the wrongful acts alleged herein, and aided, abetted, incited, compelled and/or coerced one another in the
17 wrongful acts alleged herein, and/or attempted to do so, including pursuant to Government Code
18 §12940(i). Plaintiff is further informed and believes, and based thereupon alleges, that Defendants, and
19 each of them, including those defendants named as DOES 1-20, and each of them, formed and executed
20 a conspiracy or common plan pursuant to which they would commit the unlawful acts alleged herein,
21 with all such acts alleged herein done as part of and pursuant to said conspiracy, intended to cause and
22 actually causing Plaintiff harm.

23 11. Whenever and wherever reference is made in this complaint to any act or failure to act by
24 a Defendant or co-Defendant, such allegations and references shall also be deemed to mean the acts
25 and/or failures to act by each Defendant acting individually, jointly and severally.

26 12. Plaintiff has filed complaints of discrimination, harassment, failure to prevent
27 discrimination, failure to accommodate, failure to engage in the interactive process, and wrongful
28 termination under Government Code §§12940, et seq., the California Fair Employment and Housing Act

1 (“FEHA”) with the California Department of Fair Employment and Housing (“DFEH”) and has satisfied
2 Plaintiff’s administrative prerequisites with respect to these and all related filings.

3
4 **ALTER EGO, AGENCY, SUCCESSOR AND JOINT EMPLOYER**

5 13. Plaintiff is informed and believes, and based thereon alleges, that there exists such a unity
6 of interest and ownership between Employers and DOES 1-20 that the individuality and separateness of
7 defendants have ceased to exist.

8 14. Plaintiff is informed and believes, and based thereon alleges, that despite the formation of
9 purported corporate existence, Employers and DOES 1-20 are, in reality, one and the same as Defendants,
10 including, but not limited to because:

11 a. Employers are completely dominated and controlled by one another and DOES 1-
12 20, who personally committed the frauds and violated the laws as set forth in this complaint, and who
13 have hidden and currently hide behind Defendants to perpetrate frauds, circumvent statutes, or
14 accomplish some other wrongful or inequitable purpose.

15 b. Employers and DOES 1-20 derive actual and significant monetary benefits by and
16 through one another’s unlawful conduct, and by using one another as the funding source for their own
17 personal expenditures.

18 c. Employers and DOES 1-20, while really one and the same, were segregated to
19 appear as though separate and distinct for purposes of perpetrating a fraud, circumventing a statute, or
20 accomplishing some other wrongful or inequitable purpose.

21 d. Employers do not comply with all requisite corporate formalities to maintain a
22 legal and separate corporate existence.

23 e. The business affairs of Employers and DOES 1-20 are, and at all times relevant
24 were, so mixed and intermingled that the same cannot reasonably be segregated, and the same are in
25 inextricable confusion. Employers are, and at all times relevant hereto were, used by one another and
26 DOES 1-20 as a mere shell and conduit for the conduct of certain of Defendants’ affairs, and are, and
27 were, the alter ego of one another and DOES 1-20. The recognition of the separate existence of
28 Defendants would not promote justice, in that it would permit Defendants to insulate themselves from

1 liability to Plaintiff for violations of the Government Code and other statutory violations. The corporate
2 existence of Employers and DOES 1-20 should be disregarded in equity and for the ends of justice
3 because such disregard is necessary to avoid fraud and injustice to Plaintiff herein.

4 15. Accordingly, Employers constitute the alter ego of one another and DOES 1-20, and the
5 fiction of their separate corporate existence must be disregarded.

6 16. As a result of the aforementioned facts, Plaintiff is informed and believes, and based
7 thereon alleges that Employers and DOES 1-20 are Plaintiff's joint employers by virtue of a joint
8 enterprise, and that Plaintiff was an employee of Employers and DOES 1-20. Plaintiff performed services
9 for each and every one of Defendants, and to the mutual benefit of all Defendants, and all Defendants
10 shared control of Plaintiff as an employee, either directly or indirectly, and the manner in which
11 Defendants' business was and is conducted.

12 17. Alternatively, Plaintiff is informed and believes and, based thereupon alleges, that as and
13 between DOES 1-20, Employers, or any of them, (1) there is an express or implied agreement of
14 assumption pursuant to which Employers and/or DOES 1-20 agreed to be liable for the debts of the other
15 Defendants, (2) the transaction between Employers and/or DOES 1-20 and the other Defendants amounts
16 to a consolidation or merger of the two corporations, (3) Employers and/or DOES 1-20 are a mere
17 continuation of the other Defendants, or (4) the transfer of assets to Employers and/or DOES 1-20 is for
18 the fraudulent purpose of escaping liability for Defendants' debts. Accordingly, Employers and/or DOES
19 1-20 are the successors of one or more of the other Defendants, and are liable on that basis.

20 **FACTUAL ALLEGATIONS**

21
22 18. On or about July 5, 2021, Defendants hired Mr. Allen as a probationary employee to work
23 as a Fire Fighter.

24 19. At all times during his employment, Mr. Allen's performance was satisfactory.

25 20. Mr. Allen's essential job duties consisted of responding to fire alarms, medical
26 emergencies, urban rescue, and fire prevention.

27 21. Mr. Allen has been diagnosed with Attention Deficient Hyperactivity Disorder
28 ("ADHD").

1 22. While Mr. Allen was in the Firefighter training academy, Mr. Allen was required to
2 participate in physically strenuous activities, lectures, and long hours of studying. As a result, he was
3 only able to sleep approximately six (6) hours per night during the weekdays. By the end of the week,
4 Mr. Allen was unable to sustain his focus and concentration during lectures and would fall asleep in class.
5 Mr. Allen's colleagues began to call him "Sleepy Joe." The moniker followed Mr. Allen when he started
6 working at different fire stations.

7 23. Defendants required Mr. Allen, as a probationary employee, to work long 24-hour shifts
8 on consecutive days, with little to no time off between consecutive shifts. Mr. Allen felt compelled to
9 work additional shifts because, on multiple occasions, he was guilted into volunteering for recall (working
10 additional days beyond his regularly scheduled days) by more senior employees because he was
11 unmarried and without a family of his own.

12 24. Additionally, declining a recall could result in discipline and suspension from work for
13 Mr. Allen, which could result in his inability to pass probation. The culture within the Department was
14 that "if you don't bend over backwards, you won't make it past your first year." As a result, Mr. Allen
15 worked more than average consecutive workdays and accruing a substantial amount of overtime but at
16 the expense of his ability to obtain proper rest between shifts.

17 25. Due to the long stretches of work caused by recalls and the unpredictable nature of
18 emergency calls that the fire station had to respond to during the night, Mr. Allen could only sleep
19 between two (2) to five (5) consecutive hours per night during his shifts. The physical demands of being
20 required to work multiple 24-hour shifts and inability to get sufficient rest exacerbated his body's inability
21 to recover and worked his ADHD symptoms.

22 26. Mr. Allen tried stay awake at work (an effect of ADHD resulting from his inability to
23 obtain sufficient rest between shifts) by drinking excessive amounts of coffee and energy drinks. After
24 several months of pushing his body in this manner and trying to cope with his disability and/or medical
25 condition, his body built up a severe tolerance to caffeine and became an ineffective method of self-
26 imposed reasonable accommodation.

27 27. Mr. Allen was reluctant to disclose his disability and/or medical condition as a result of
28 the stigma that his coworkers expressed towards persons who were known to take ADHD medication. In

1 the months that he worked for Defendants, Mr. Allen heard his co-workers openly discussing the death
2 of a co-worker on the line of duty and who was found to have amphetamines or methamphetamines in
3 his body. Some co-workers called him a “tweaker,” referring to someone who uses methamphetamines.
4 Other co-workers expressed that the deceased co-worker may have had a condition that required him to
5 take medication that showed up as taking amphetamines or methamphetamines. In response, other co-
6 workers expressed doubt at that hypothesis and reinforced a negative stereotype of anyone who had to
7 take such medication. These comments created a hostile work environment and felt like harassment for
8 his real or perceived disability and/or medical condition.

9 28. In addition to being known as “Sleepy Joe” by his colleagues, these comments by co-
10 workers about persons perceived to have a disability and/or medical condition further worsened Mr.
11 Allen’s apprehension of being stigmatized and ostracized if he were to disclose his disability and request
12 a reasonable accommodation.

13 29. On or around April 14, 2022, Mr. Allen was randomly drug tested as was required of
14 probationary fire fighters.

15 30. On or about April 20, 2022, Mr. Allen was contacted by Defendants’ and informed of the
16 result of his drug test. Mr. Allen tested positive for “amphetamines-methamphetamines,” and specifically,
17 for “methamphetamines.” Mr. Allen explained to them that he was confused by the result because he had
18 never taken methamphetamine in his life and was taking amphetamines, a prescription medication. Mr.
19 Allen asked if he could submit proof of his prescription to explain what appeared to be an erroneous test
20 result. Defendants responded that even if he submitted his prescription it made no difference because the
21 result was for “methamphetamines.”

22 31. For persons taking amphetamines for ADHD, there is a high likelihood of drug test results
23 coming back as a false positive for the illegal substance of methamphetamine. Urine drug tests are more
24 likely to result in a false positive for methamphetamines for persons taking amphetamines. There are
25 more reliable drug testing methods that accurately distinguish between amphetamines and
26 methamphetamines.

27 32. On or about April 20, 2022, Mr. Allen informed his supervisors of his test result, his
28 disability, and his prescription medication. He informed his supervisors that he believed that the result

1 was erroneous. His supervisors informed him that someone from the Department would likely get in
2 touch with him about his test result and that he would have an opportunity to explain his disability and/or
3 medical condition and his prescription which was the likely cause of the false-positive drug test result.

4 33. On or around April 21, 2022, Mr. Allen contacted Defendants and inquired about the
5 possibility of retaking the drug test and inquired about using other drug testing methods as a reasonable
6 accommodation. Defendants informed Mr. Allen that he had no other options and that his only option
7 was for a retest of the same urine sample obtained on April 14, 2022.

8 34. On or about May 4, 2022, Defendants informed Mr. Allen that the result of the re-test
9 indicated that he was positive for “amphetamines-methamphetamines.” However, the exact breakdown
10 of the retest was not provided to Mr. Allen.

11 35. Between May 4, 2022, and May 17, 2022, Mr. Allen waited for someone from the
12 Department to contact him about his test result where he would provide proof of his prescription. Mr.
13 Allen was never contacted by anyone in the Department.

14 36. On or around May 17, 2022, Mr. Allen was discharged from his employment.

15 37. Defendant’s drug testing policy had a discriminatory impact on those with disabilities
16 and/or medical conditions, specifically, those with ADHD taking amphetamines to treat ADHD.

17 38. As a result of the disparate impact of Defendant’s drug testing policy, Mr. Allen has been
18 displaced or otherwise removed from his position.

19 39. Defendants discriminated and retaliated against Plaintiff by wrongfully terminating
20 Plaintiff’s employment as a result of failing to engage Plaintiff in a good faith interactive process and
21 failing to provide a reasonable accommodation.

22 40. At all relevant times, Defendants failed to properly engage in a good faith interactive
23 process in an effort to properly accommodate Plaintiff’s disability and/or medical condition such that
24 Plaintiff could continue working for Defendants.

25 41. At all relevant times, Defendants failed to reasonably accommodate Plaintiff even though
26 Plaintiff was able to perform the essential job duties of Plaintiff’s position or another position with or
27 without accommodations.

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1 42. Plaintiff's termination was substantially motivated by Plaintiff's disability or perceived
2 disability, medical condition or perceived medical condition, request for accommodation, and/or
3 engagement in protected activities, without any discussion of disability accommodations or any good
4 faith attempt to engage in the interactive process with Plaintiff. Defendants' discriminatory animus is
5 evidenced by the previously mentioned facts.

6 43. Defendants' conduct described herein was undertaken, authorized, and/or ratified by
7 Defendants' officers, directors and/or managing agents, including, but not limited to those identified
8 herein as DOES 1 through 20, who were authorized and empowered to make decisions that reflect and/or
9 create policy for Defendants. The aforementioned conduct of said managing agents and individuals was
10 therefore undertaken on behalf of Defendants who further had advanced knowledge of the actions and
11 conduct of said individuals whose actions and conduct were ratified, authorized, and approved by
12 managing agents whose precise identities are unknown to Plaintiff at this time and are therefore identified
13 and designated herein as DOES 1 through 20, inclusive.

14 44. As a result of Defendants' actions, Plaintiff has suffered and will continue to suffer general
15 and special damages, including severe and profound pain and emotional distress, anxiety, depression,
16 headaches, tension, and other physical ailments, as well as medical expenses, expenses for psychological
17 counseling and treatment, and past and future lost wages and benefits.

18 45. As a result of the above, Plaintiff is entitled to past and future lost wages, bonuses,
19 commissions, benefits and loss or diminution of earning capacity.

20 46. Plaintiff claims general damages for emotional and mental distress and aggravation in a
21 sum in excess of the jurisdictional minimum of this Court.

22
23 **FIRST CAUSE OF ACTION**
24 **FOR DISCRIMINATION (DISPARATE TREATMENT) IN VIOLATION OF GOV'T CODE**
25 **§§12940 ET SEQ.**
26 **AGAINST ALL DEFENDANTS**

27 47. Plaintiff re-alleges and incorporates by reference all preceding paragraphs, inclusive, as
28 though set forth in full herein.

1 48. At all times hereto, the FEHA was in full force and effect and was binding upon
2 Defendants and each of them.

3 49. As such term is used under FEHA, “on the bases enumerated in this part” means or
4 refers to discrimination on the bases of one or more of the protected characteristics under FEHA.

5 50. FEHA requires Defendants to refrain from discriminating against an employee on the
6 basis of disability and/or medical condition, real or perceived, and to prevent discrimination and
7 harassment on the basis of disability and/or medical condition, real or perceived, and engagement in
8 protected activities from occurring.

9 51. Plaintiff was a member of multiple protected classes as a result of Plaintiff’s disability,
10 medical condition and/or the perception that Plaintiff was suffering from a disability and/or medical
11 condition.

12 52. At all times relevant hereto, Plaintiff was performing competently in the position
13 Plaintiff held with Defendants.

14 53. Plaintiff suffered the adverse employment actions of unlawful harassment,
15 discrimination, failure to accommodate, failure to investigate, remedy, and/or prevent discrimination,
16 failure to reinstate and/or return to work, and termination, and was harmed thereby.

17 54. Plaintiff is informed and believes that Plaintiff’s disability and/or medical condition,
18 real and perceived, and/or some combination of these protected characteristics under Government Code
19 §12926(j) were motivating reasons and/or factors in the decisions to subject Plaintiff to the
20 aforementioned adverse employment actions.

21 55. Said conduct violates the FEHA, and such violations were a proximate cause in
22 Plaintiff’s damage as stated below.

23 56. The damage allegations of all preceding paragraphs, inclusive, are herein incorporated
24 by reference.

25 57. Pursuant to Government Code §12965(b), Plaintiff requests a reasonable award of
26 attorneys’ fees and costs, including expert fees pursuant to the FEHA.

SECOND CAUSE OF ACTION
DISABILITY DISCRIMINATION (DISPARATE IMPACT)
IN VIOLATION OF GOV'T CODE §§12940 ET SEQ.
AGAINST ALL DEFENDANTS

58. As a second, separate and distinct claim, Mr. Allen alleges:

59. The factual allegations of the above paragraphs are re-alleged and incorporated herein by reference.

60. Plaintiff is a member of classes protected from discrimination by the FEHA because of his medical condition and/or disability.

61. As described above, Defendants implemented a facially neutral policy of drug testing in a manner that had a high probability of resulting in false positives for methamphetamine in those who were treating their ADHD with amphetamines, without a reliable method of retesting.

62. The disparate impact of that policy was on the terms, conditions, and privileges of Mr. Allen's employment.

63. As described above, the general population of the Department's population was not affected by this policy, as employees outside of Mr. Allen's protected classes were not adversely affected by the unreliable nature of Defendants' drug testing policies.

64. As a direct result of the discrimination suffered by Mr. Allen as alleged herein, he is entitled to reinstatement of his position as a Fire Fighter and back pay in the amount proven at trial herein.

THIRD CAUSE OF ACTION
FOR HARASSMENT IN VIOLATION OF GOV'T CODE §§12940 ET SEQ.
AGAINST ALL DEFENDANTS

65. Plaintiff re-alleges and incorporates by reference all preceding paragraphs, inclusive, as though set forth in full herein.

66. At all times hereto, the FEHA was in full force and effect and was binding upon Defendants and each of them.

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1 67. As such term is used under FEHA, “on the bases enumerated in this part” means or
2 refers to harassment on the bases of one or more of the protected characteristics under FEHA.

3 68. These laws set forth in the preceding paragraph require Defendants to refrain from
4 harassing, or creating, or maintaining a hostile work environment against an employee based upon the
5 employee’s disability and/or medical condition, real or perceived, and engagement in protected
6 activities, as set forth hereinabove.

7 69. Defendants’ harassing conduct was severe or pervasive, was unwelcome by Plaintiff,
8 and a reasonable person in Plaintiff’s circumstances would have considered the work environment to
9 be hostile or abusive.

10 70. Defendants violated the FEHA and the public policy of the State of California which is
11 embodied in the FEHA by creating a hostile work environment and harassing Plaintiff because of
12 Plaintiff’s disability and/or medical condition, real or perceived, engagement in protected activities,
13 and/or some combination of these protected characteristics, as set forth hereinabove.

14 71. The above said acts were perpetrated upon Plaintiff by a supervisor, and/or Defendants
15 knew or should have known of the conduct but failed to take immediate and appropriate corrective
16 action.

17 72. The above said acts of Defendants constitute violations of the FEHA and violations of
18 the public policy of the State of California. Such violations were a proximate cause in Plaintiff’s
19 damage as stated below.

20 73. The damage allegations of all preceding paragraphs, inclusive, are herein incorporated
21 by reference.

22 74. Pursuant to Government Code §12965(b), Plaintiff requests a reasonable award of
23 attorneys’ fees and costs, including expert fees pursuant to the FEHA.

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1 **FOURTH CAUSE OF ACTION**
2 **FAILURE TO PREVENT DISCRIMINATION AND HARASSMENT**
3 **IN VIOLATION OF GOV'T CODE §12940(k)**
4 **AGAINST ALL DEFENDANTS**

5 75. Plaintiff re-alleges and incorporates by reference all preceding paragraphs, inclusive, as
6 though set forth in full herein.

7 76. At all times hereto, the FEHA, including in particular Government Code §12940(k),
8 was in full force and effect and was binding upon Defendants. This subsection imposes a duty on
9 Defendants to take all reasonable steps necessary to prevent discrimination and harassment from
10 occurring. As alleged above, Defendants violated this subsection and breached their duty by failing to
11 take all reasonable steps necessary to prevent discrimination and harassment from occurring.

12 77. The above-said acts of Defendants constitute violations of the FEHA, and were a
13 proximate cause in Plaintiff's damage as stated below.

14 78. The damage allegations of all preceding paragraphs, inclusive, are herein incorporated
15 by reference.

16 79. Pursuant to Government Code §12965(b), Plaintiff requests a reasonable award of
17 attorneys' fees and costs, including expert fees pursuant to the FEHA.

18
19 **FIFTH CAUSE OF ACTION**
20 **FOR FAILURE TO PROVIDE REASONABLE ACCOMMODATIONS**
21 **IN VIOLATION OF GOV'T CODE §§12940 ET SEQ.**
22 **AGAINST ALL DEFENDANTS**

23 80. Plaintiff re-alleges and incorporates by reference all preceding paragraphs, inclusive, as
24 though set forth in full herein.

25 81. At all times hereto, the FEHA, including in particular Government Code §12940(m),
26 was in full force and effect and was binding upon Defendants. This subsection imposes an ongoing
27 duty on Defendants to make reasonable accommodation for the known physical disability and/or
28 medical condition of an employee.

1 82. At all relevant times, Plaintiff was a member of a protected class within the meaning of,
2 in particular, Government Code §§12940(a) & 12986(1) et seq. because Plaintiff had a disability, a
3 physical condition that affected Plaintiff's major life activities, and medical condition of which
4 Defendants had both actual and constructive knowledge.

5 83. At all times herein, Plaintiff was willing and able to perform the duties and functions of
6 the position in which Plaintiff was employed or could have performed the duties and functions of that
7 position with reasonable accommodations. At no time would the performance of the functions of the
8 employment position, with a reasonable accommodation for Plaintiff's disability or medical condition,
9 actual or as it was perceived by Defendants, have been a danger to Plaintiff's or any other person's
10 health or safety. Accommodation of Plaintiff's disability or disability or medical condition, real or
11 perceived by Defendants, would not have imposed an undue hardship on Defendants. Defendants
12 failed and refused to accommodate Plaintiff's disability, failed to engage in the interactive process with
13 Plaintiff and continue to violate this obligation, up to and including the date of Plaintiff's termination
14 or, if Defendant contends Plaintiff was never terminated, through the present and ongoing.

15 84. The above said acts of Defendants constitute violations of the FEHA and were a
16 proximate cause in Plaintiff's damage as stated below.

17 85. The damage allegations of all preceding paragraphs, inclusive, are herein incorporated
18 by reference.

19 86. The foregoing conduct of Defendants individually, and/or by and through their officers,
20 directors, and/or managing agents, was intended by the Defendants to cause injury to the Plaintiff or
21 was despicable conduct carried on by the Defendants with a willful and conscious disregard of the
22 rights of Plaintiff or subjected Plaintiff to cruel and unjust hardship in conscious disregard of Plaintiff's
23 rights such as to constitute malice, oppression, or fraud under Civil Code §3294, thereby entitling
24 Plaintiff to punitive damages in an amount appropriate to punish or make an example of Defendants.

25 87. Pursuant to Government Code §12965(b), Plaintiff requests a reasonable award of
26 attorneys' fees and costs, including expert fees pursuant to the FEHA.

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SIXTH CAUSE OF ACTION
FOR FAILURE TO ENGAGE IN A GOOD FAITH INTERACTIVE PROCESS
IN VIOLATION OF GOV'T CODE §§12940 ET SEQ.
AGAINST ALL DEFENDANTS

88. Plaintiff re-alleges and incorporates by reference all preceding paragraphs, inclusive, as though set forth in full herein.

89. At all times hereto, the FEHA, including in particular Government Code §12940(n), was in full force and effect and was binding upon Defendants. This subsection imposes an ongoing duty on Defendants to engage in a timely, good faith, interactive process with the employee to determine effective reasonable accommodations, if any, in response to a request for reasonable accommodation by an employee with a known physical disability or known medical condition and/or becoming aware of the employee's need for accommodation.

90. At all relevant times, Plaintiff was a member of a protected class within the meaning of, in particular, Government Code §§12940(a) & 12986(1) et seq. because Plaintiff had a physical disability that affected Plaintiff's major life activities, and medical condition of which Defendants had both actual and constructive knowledge.

91. Plaintiff reported the disability to Defendants, triggering Defendants' obligation to engage in the interactive process with Plaintiff, but at all times herein, Defendants failed and refused to do so. Thereafter, despite Defendants continuing obligation to engage in the interactive process with Plaintiff, Defendants failed and refused to have any dialogue with Plaintiff whatsoever, on any of these occasions, and Defendants violated, and continued to violate this obligation up to and including the date of Plaintiff's termination or, if Defendant contends Plaintiff was never terminated, through the present and ongoing.

92. The above said acts of Defendants constitute violations of the FEHA and were a proximate cause in Plaintiff's damage as stated below.

93. The damage allegations of all preceding paragraphs, inclusive, are herein incorporated by reference.

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1 94. Pursuant to Government Code §12965(b), Plaintiff requests a reasonable award of
2 attorneys' fees and costs, including expert fees pursuant to the FEHA.

3
4 **PRAYER FOR RELIEF**

5 **WHEREFORE**, Plaintiff seeks judgment against Defendants and each of them, in an amount
6 according to proof as follows:

7 1. For a money judgment representing compensatory damages including lost wages,
8 earnings, commissions, retirement benefits, and other employee benefits, and all other sums of money,
9 together with interest on these amounts; for other special damages; and for general damages for mental
10 pain and anguish and emotional distress and loss of earning capacity;

11 2. For prejudgment interest on each of the foregoing at the legal rate from the date the
12 obligation became due through the date of judgment in this matter;

13 **WHEREFORE**, Plaintiff further seeks judgment against Defendants, and each of them, in an
14 amount according to proof, as follows:

15 3. For injunctive relief barring Defendants' discriminatory employment policies and
16 practices in the future, and restoring Plaintiff to Plaintiff's former position with Defendants;

17 4. For costs of suit, attorneys' fees, and expert witness fees pursuant to the FEHA and/or any
18 other basis;

19 5. For post-judgment interest; and

20 6. For any other relief that is just and proper.

21
22 DATED: August 5, 2022

MOSLEY AND ASSOCIATES

23
24 By: 

25 Walter Mosley, Esq.
26 Carlos E. Montoya, Esq.
27 Nathalie Meza Contreras, Esq.
28 Attorneys for Plaintiff
 JOSEPH ALLEN


1 **JURY TRIAL DEMANDED**

2 Plaintiff JOSEPH ALLEN demands trial of all issues by jury.

3 DATED: August 5, 2022

4 **MOSLEY AND ASSOCIATES**

5 By:

6 
7 Walter Mosley, Esq.
8 Carlos E. Montoya, Esq.
9 Nathalie Meza Contreras, Esq.
10 Attorneys for Plaintiff
11 JOSEPH ALLEN
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