

Assigned for all purposes to: Stanley Mosk Courthouse, Judicial Officer: Gregory Keosian

(SPACE BELOW FOR FILING STAMP ONLY)

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SUPERIOR COURT, STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

CENTRAL DISTRICT

ANDREW LITHGOE,

Plaintiff,

vs.

COUNTY OF LOS ANGELES, a public
entity; LOS ANGELES COUNTY FIRE
DEPARTMENT, a public entity; DOES 1-15,

Defendants

CASE NO: **22STCV32526**

**COMPLAINT FOR DAMAGES AND
INJUNCTIVE RELIEF**

1. Employment Discrimination
(Disability)
2. Failure to Accommodate
3. Failure to Engage in the Interactive
Process

Plaintiff alleges:

ALLEGATIONS AS TO ALL CAUSES OF ACTION

1. Plaintiff ANDREW LITHGOE (referred to herein at times as “Plaintiff” or “Mr. Lithgoe), was and is a resident of the State of California, County of Los Angeles.

2. Before being terminated as described below, Plaintiff was employed by the Defendants for over sixteen years.

3. Defendant, COUNTY OF LOS ANGELES, (“COUNTY”) is a public entity, operating under, and by virtue of, the laws and Constitution of the State of California. Defendant COUNTY regularly employs over 500 people and is an “employer” as defined in California Government Code §12926(d).

4. Defendant, LOS ANGELES COUNTY FIRE DEPARTMENT (“LACFD”) is a

1 public entity, and operates as a subdivision of Defendant COUNTY, operating under, and by virtue
2 of, the laws and Constitution of the State of California. Defendant LACFD regularly employs over
3 500 people and is an “employer” as defined in California Government Code §12926(d).

4 5. Plaintiff is ignorant of the true names and capacities of Defendants sued herein as
5 DOES 1-15, inclusive, and therefore sues these defendants by such fictitious names. Plaintiff will
6 amend this complaint to allege their true names and capacities when ascertained. Plaintiff is
7 informed and believes and thereon alleges that each of the fictitiously named defendants is
8 responsible in some manner for the occurrences herein alleged and that Plaintiff’s injuries as
9 herein alleged were proximately caused by their negligence. Plaintiff is further informed and
10 believes and thereon alleges that each of the fictitiously named defendants were acting as the agent
11 or employee of each other defendants, and that all acts of the Defendants named herein by their
12 true or fictitious names acted with the authority, or subsequent ratification, of each of the other
13 Defendants.

14 6. PLAINTIFF Andrew Lithgoe was employed as a Fire Fighter with LACFD
15 beginning September 2, 2005.

16 7. PLAINTIFF was fully qualified and competent to perform the duties assigned to
17 him in the course of his employment with the Defendants and did perform the duties in a
18 competent manner.

19 8. PLAINTIFF has been diagnosed with epilepsy, a condition which may result in
20 seizures. Seizures began in March 2010. He had one seizure on duty September 19, 2018 (during
21 a 24-hour shift) and one seizure after being assigned to 10-hour light duty position January 10,
22 2019. That was the last time Mr. Lithgoe had a non-induced seizure.

23 9. Mr. Lithgoe had been temporarily accommodated in a light duty Fire Fighter
24 position due to temporary restrictions imposed by Dr. Jeffrey M. Chung, Cedars-Sinai Medical
25 Center, on March 9, 2021. Mr. Lithgoe informed Defendants of those restrictions. The temporary
26 restrictions were that Mr. Lithgoe could not work more than a 12-hour shift in a 24 hour period,
27 and could not be sleep deprived.

28 10. On May 27, 2021, Mr. Lithgoe was examined by Dr. Chung. Dr. Chung released

1 Mr. Lithgoe to usual and customary duties without restrictions effective May 27, 2021. Dr. Chung
2 indicated on a COUNTY-provided form that Mr. Lithgoe could perform all duties, including
3 fighting fires, assisting in rescues, assessing patients' conditions, planning inspections, driving and
4 operating fire apparatus and equipment as required in emergency relief situations, performing as a
5 paramedic on a mobile intensive care unit, driving and operating a pickup truck, and "other"
6 duties. Dr. Chung found that Mr. Lithgoe could work all of the firefighter shifts, which are usually
7 24-hour shifts, including mandatory overtime of up to five work shifts (120 hours) at any given
8 time. Dr. Chung, on May 27, 2021, also lifted the earlier restrictions limiting Mr. Lithgoe to no
9 more than a 12 hour shift per 24 hours, and lifted the restriction that he not be "sleep deprived."
10 Dr. Chung's opinion was that if Mr. Lithgoe were to return to full duty, including working 24-hour
11 shifts to attend to emergency medical calls and/or fires, possible mandated overtime and strike
12 team deployment, Mr. Lithgoe's seizures would not return. This opinion was re-affirmed by Dr.
13 Chung following a subsequent exam on May 12, 2022.

14 11. Dr. Chung's May 27, 2021 report described above was given to Rachel Lara,
15 Manager of LACFD Risk Management in or around May, 2021. Shortly thereafter Mr. Lithgoe
16 returned to full time duties.

17 12. On September 30, 2021, Mr. Lithgoe was working his assignment at Training
18 Services section. Some LACFD officials who believed they were familiar with Mr. Lithgoe's
19 medical history erroneously believed Mr. Lithgoe was having a seizure due to a false perception of
20 behavior, but he was not having a seizure.

21 13. Due to that erroneous belief about PLAINTIFF by LACFD officials, on October 1,
22 2021, PLAINTIFF was placed on Ordered Absence status by his superiors at LACFD due to the
23 perception of having a "seizure" the previous day. Mr. Lithgoe did not have a seizure the previous
24 day. Subsequent medical evaluation confirmed that Mr. Lithgoe did not have a seizure at any time
25 around September 30, 2021.

26 14. During "Ordered Absence," PLAINTIFF was ordered to not report to his work
27 location; to remain available at home and by telephone Monday through Friday, 8:00 a.m. to 5:00
28 p.m.; to obtain express approval if he needed time off, including his vacation time or benefit time;

1 to not report to any LACFD facility, and not to contact anyone in the LACFD by telephone, e-mail
2 or any other means unless authorized by the Acting Chief or a Battalion Chief.

3 15. The assignment to "Ordered Absence" on October 1, 2021 resulted in loss of
4 compensation and overtime opportunities for PLAINTIFF.

5 16. LACFD ordered Plaintiff to undergo a "fitness for duty examination" while he was
6 on Ordered Absence. On November 2, 2021, PLAINTIFF underwent a "fitness for duty
7 examination" conducted by Dr. K. Adam Anees on behalf of Defendant COUNTY. During the
8 examination, Dr. Anees provided a form for PLAINTIFF to sign. The form was entitled
9 "Employee Optional Authorization for Release of Medical Information." Since the form was
10 "Optional," PLAINTIFF did not sign it. The purpose of the form was to allow the LACFD of Los
11 Angeles Fire Department's appointed Fitness for Duty Examiner, Dr. Anees, to access
12 PLAINTIFF's medical records from his treating physician, Dr. Chung. PLAINTIFF later signed
13 the form, under duress, for Dr. Anees to review Dr. Chung's records.

14 17. The medical records provided to Dr. Anees by Dr. Chung, PLAINTIFF's regular
15 treating doctor, would have reflected the fact that PLAINTIFF had not suffered a seizure in or
16 around September 30, 2022, and that Dr. Chung had cleared Mr. Lithgoe for full duty in May,
17 2021.

18 18. In a meeting on March 24, 2022, PLAINTIFF was informed that as a result of the
19 Fitness for Duty Evaluation conducted by Dr. Anees, the COUNTY and LACFD believed
20 PLAINTIFF was disabled; specifically, Dr. Anees opined that Mr. Lithgoe has a physical
21 impairment that limits his ability to engage in a major life activity, and perform one or more of the
22 essential functions of the position. The following permanent restrictions were indicated by Dr.
23 Anees: No sleep deprivation (limit shift duration to 12 hours at a time, no irregular hours, allow at
24 least 8 hours of rest/sleep between shifts to recover. Mr. Lithgoe was restricted relative the
25 standard work schedule. Dr. Anees restricted PLAINTIFF, as follows: "On duty for a maximum
26 of 12 hours and then must be off duty for 8 hours. His off-duty time is to be at home/outside of
27 County facilities."

28 19. In the March 24, 2022 meeting, Mr. Lithgoe was told by Rachel Lara, Manager of

1 Risk Management for LACFD, that based on the work restrictions found by Dr. Anees, the
2 Department was "unable to accommodate" the perceived disability. PLAINTIFF's counsel asked
3 Ms. Lara why the restrictions imposed by Dr. Anees could not be accommodated and was told that
4 firefighters work 24-hour shifts, and the department does not have 12-hour shifts. PLAINTIFF's
5 counsel asked for a copy of Dr. Anees's report or a copy of Dr. Anees's letter. Both requests were
6 denied.

7 20. Mr. Lithgoe was then told that effective Friday, March 25, 2022, he would no
8 longer be on Ordered Absence, and would have to begin using his own benefit time. Mr. Lithgoe
9 was informed that he would need to file for a Non Service-Connected Disability Retirement
10 application with the Los Angeles County Employees Retirement Association (LACERA), with or
11 without salary supplement. Mr. Lithgoe was informed that if he did not file within seven (7)
12 business days (i.e., by April 4, 2022), the COUNTY would file on his behalf.

13 21. In or around April, 2022, the COUNTY did file for a retirement on Mr. Lithgoe's
14 behalf. Mr. Lithgoe has informed LACERA that he does not wish to retire at this time.

15 22. On or about April 1, 2022, Mr. Lithgoe filed a grievance within LACFD, stating
16 that he disputed the conclusion of the Fitness for Duty Evaluation as reported by Rachel Lara on
17 March 24, 2022. Mr. Lithgoe initiated the grievance process to dispute the objectionable
18 conclusion made by his employer communicated to him during the meeting conducted March 24,
19 2022. After properly allowing his grievance request to matriculate up through his chain of
20 command, it was the decision and recommendation by LACFD Deputy Fire Chief Anderson
21 Mackey that Mr. Lithgoe request another Interactive Process Meeting with Human Resources.

22 23. On May 12, 2022, PLAINTIFF's treating physician, Dr. Jeffrey M. Chung, from
23 Cedars-Sinai, filled out and signed a LACFD Patient Status Report. The report states that Dr.
24 Chung had examined PLAINTIFF on May 9, 2021 (in addition to the May 12, 2022 exam); that
25 Plaintiff had been released to his usual and customary position without restrictions on May 27,
26 2021, that PLAINTIFF may have contact with the public.

27 24. On or about June 22, 2022, Mr. Lithgoe wrote to Rachel Lara, LACFD Risk
28 Management, to request an interactive process meeting to discuss items of disagreement regarding

1 the March 24, 2022 meeting, and the Patient Status Report completed by Dr. Chung on May 12,
2 2022. Ms. Lara refused to engage in further discussion, stating that the COUNTY's doctor's report
3 was the final opinion.

4 25. On August 2, 2022, Mr. Lithgoe was informed by his Department that effective
5 August 3, 2022 his Ordered Absence was terminated and he must use his own benefit time for any
6 absences. This action effectively ends Mr. Lithgoe's employment with Defendants COUNTY and
7 LACFD.

8 **FIRST CAUSE OF ACTION - EMPLOYMENT DISCRIMINATION**

9 **CALIFORNIA GOVERNMENT CODE § 12940(a) *et seq***

10 **AGAINST ALL DEFENDANTS**

11 26. Plaintiff incorporates paragraphs 1 - 25 at this point as though set forth in full.

12 27. By doing the actions complained of above, Defendants have discriminated against
13 Plaintiff, failed to accommodate an employee with a physical disability, and failed to engage in an
14 interactive process, in violation of the FEHA, California Government Code § 12940 *et. seq.* The
15 misperception about PLAINTIFF's behavior, the failure to engage in the interactive process based
16 upon that misperception, and the failure to accommodate PLAINTIFF were substantial causes of
17 Defendants' termination of PLAINTIFF. PLAINTIFF was terminated because of his perceived
18 and/or actual disability, which was a substantial factor in his termination.

19 28. As a direct and proximate result of the acts of Defendants, as described above,
20 PLAINTIFF was prevented from attending to his former position and usual occupation.
21 PLAINTIFF thereby has lost and will continue to lose earnings and employment related benefits,
22 in an as yet unascertained amount. PLAINTIFF will seek to amend this complaint as such time as
23 the amount is ascertained, or according to proof.

24 29. As a direct and proximate result of the acts of Defendant, as described above,
25 PLAINTIFF suffered humiliation, mental anguish, and emotional and physical distress, all of
26 which caused and continue to cause great physical and emotional pain and suffering.

27 30. As a direct and proximate result of the acts of Defendant, PLAINTIFF expects to
28 incur, and will continue to incur, medical and related expenses. The full amount of these expenses

1 is not known to PLAINTIFF. PLAINTIFF will seek to amend this complaint as such time as the
2 amount is ascertained, or according to proof.

3 **SECOND CAUSE OF ACTION**

4 **FAILURE TO ACCOMMODATE - GOVERNMENT CODE § 12940(m)**

5 **AGAINST ALL DEFENDANTS**

6 31. Plaintiff incorporates paragraphs 1-25 at this point as though set forth in full.

7 32. Defendants were required to accommodate any of PLAINTIFF's actual or perceived
8 disabilities after they became aware of functional limitations caused by disability.

9 33. Defendants did nothing to accommodate any of PLAINTIFF's actual or perceived
10 disabilities at any time after September 30, 2021, and instead engaged in a course of action
11 designed to find him to be "disabled," with a "disability" which they concluded they could not
12 accommodate, leading directly to PLAINTIFF's dismissal. In fact, Defendants had previously
13 accommodated PLAINTIFF's disability when it did limit his ability to work, and there was no
14 reason they could not do the same thing when they attributed to PLAINTIFF the same disability he
15 had had previously which they were able to accommodate.

16 34. By doing the acts described above, Defendants violated California Government
17 Code § 12940(m), which makes it illegal "for an employer . . . to fail to make reasonable
18 accommodation for the known physical or mental disability of an . . . employee."

19 35. As a direct result of Defendants' unwillingness and failure to accommodate
20 PLAINTIFF's actual or perceived disabilities, PLAINTIFF was terminated from his employment
21 with Defendants.

22 36. As a direct and proximate result of the acts of Defendants, as described above,
23 PLAINTIFF was prevented from attending to his former position and usual occupation.
24 PLAINTIFF thereby has lost and will continue to lose earnings and employment related benefits,
25 including retirement benefits, in an as yet unascertained amount. PLAINTIFF will seek to amend
26 this complaint as such time as the amount is ascertained, or according to proof.

27 37. As a direct and proximate result of the acts of Defendant, as described above,
28 PLAINTIFF suffered humiliation, mental anguish, and emotional and physical distress, all of

1 which caused and continue to cause great physical and emotional pain and suffering.

2 38. As a direct and proximate result of the acts of Defendant, PLAINTIFF expects to
3 incur, and will continue to incur, medical and related expenses. The full amount of these expenses
4 is not known to PLAINTIFF. PLAINTIFF will seek to amend this complaint as such time as the
5 amount is ascertained, or according to proof.

6 **THIRD CAUSE OF ACTION**

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

8 **GOVERNMENT CODE § 12940 (n)**

9 **AGAINST ALL DEFENDANTS**

10 39. Plaintiff incorporates paragraphs 1-25 at this point by reference as though set forth
11 in full.

12 40. By failing to accept and consider medical information offered to them by
13 PLAINTIFF, showing that he did not need accommodation and could perform the duties of his
14 position without any accommodation, and by instead terminating PLAINTIFF's employment,
15 Defendants violated California Government Code § 12940 (n), which makes it illegal "for an
16 employer . . . to fail to engage in a timely, good faith, interactive process with the employee or
17 applicant to determine effective reasonable accommodations, if any, in response to a request for
18 reasonable accommodation by an employee or applicant with a known physical or mental
19 disability or known medical condition."

20 41. As a direct and proximate result of the acts of Defendants, as described above,
21 PLAINTIFF was prevented from attending to his former position and usual occupation.
22 PLAINTIFF thereby has lost and will continue to lose earnings and employment related benefits,
23 in an as yet unascertained amount. PLAINTIFF will seek to amend this complaint as such time as
24 the amount is ascertained, or according to proof.

25 42. As a direct and proximate result of the acts of Defendant, as described above,
26 PLAINTIFF suffered humiliation, mental anguish, and emotional and physical distress, all of
27 which caused and continue to cause great physical and emotional pain and suffering.

28 43. As a direct and proximate result of the acts of Defendant, PLAINTIFF expects to

1 incur, and will continue to incur, medical and related expenses. The full amount of these expenses
2 is not known to PLAINTIFF. PLAINTIFF will seek to amend this complaint as such time as the
3 amount is ascertained, or according to proof.

4 **FURTHER ALLEGATIONS AS TO ALL CAUSES OF ACTION**

5 44. As a proximate result of the acts of Defendant as alleged above, Plaintiff was hurt
6 and injured in his health, strength, and activity, sustaining injury to his nervous system and person,
7 all of which have caused, and continue to cause, PLAINTIFF loss of earnings and earning
8 capacity, loss of benefits, including retirement benefits, and other economic losses, as well as great
9 mental, physical and nervous pain and suffering.

10 45. As a further proximate result of the acts of Defendant, PLAINTIFF expects to
11 incur, and will continue to incur, medical and related expenses. The full amount of these expenses
12 is not known to PLAINTIFF. PLAINTIFF will seek to amend this complaint as such time as the
13 amount is ascertained, or according to proof.

14 46. As a further proximate result of the acts of Defendant, as described above,
15 PLAINTIFF has suffered, and will continue to suffer, severe emotional distress, for which he has
16 sought professional treatment, and for which he continues to seek such treatment, and expects to
17 treat in the future. PLAINTIFF will seek to amend this complaint at the time when the value of
18 such emotional distress, and associated economic costs, are ascertained, or according to proof.

19 47. On August 26, 2022, Plaintiff filed a Charge of Discrimination with the California
20 Department of Fair Employment and Housing, and obtained a Right to Sue Notice that same day.
21 Accordingly, PLAINTIFF has exhausted his administrative agency requirements to bring the
22 foregoing causes of action. A true and accurate copy of the Right to Sue Notice is attached hereto
23 as **EXHIBIT 1**.

24 **III. REQUEST FOR INJUNCTIVE RELIEF**

25 48. The acts of Defendants and those acting on their behalf have caused and will
26 continue to cause irreparable harm to PLAINTIFF. PLAINTIFF has no plain, adequate of speedy
27 remedy at law to redress the continuing policies and practices of Defendants, and therefore seeks
28 affirmative and injunctive relief, specifically, for an injunction:

- 1 A. Restraining Defendants from continuing or maintaining any policy, practice,
2 custom or usage which, on the basis of disability, adversely affects employees of
3 Defendants; restraining Defendants, and each of them, along with Defendants’
4 supervising employees, agents and all those subject to its control or acting in
5 concert with it from causing, encouraging, condoning, or permitting the practices of
6 fabricating a “disability” for an employee, failing to engage in good faith in the
7 interactive process, ignoring relevant medical information during the interactive
8 process, and wrongfully terminating employees for fabricated disabilities which
9 Defendants claim to be unable to accommodate; and
- 10 B. Restraining Defendants from retaliating against the employees of Defendants who
11 pursue their workplace rights under the Fair Employment and Housing Act,
12 California Government Code § 12900 *et seq.*; and
- 13 C. Requiring that Defendants conduct training of all employees to educate them to the
14 harmful nature of discrimination, including training in detection, correction, and
15 prevention of discriminatory practices; and for affirmative relief requiring that
16 Defendants notify all employees and supervisors, through individual letters and
17 permanent posting in prominent locations in all offices that discrimination on the
18 basis of disability; and
- 19 D. Requiring that Defendants develop clear and effective policies and procedures by
20 which employees complaining of bad faith in the interactive process and not being
21 accommodated may have their complaints promptly and thoroughly investigated
22 (by a *neutral* fact finder) and informal as well as formal processes for hearing,
23 adjudication and appeal of the complaints; requiring that Defendants develop
24 appropriate sanctions or disciplinary measures for Risk Management Managers, as
25 well as Defendants’ supervisors or other employees who are found to have
26 committed bad faith, dishonest interactive process meetings whose sole goal is
27 terminating an employee perceived to be disabled, including warnings to the
28 offending person and permanent notations in that person's employment record for

reference in the event future complaints are directed against that person, and
dismissal where other measures fail; and

- E. Requiring that all management employees of Defendants, including but not limited to Risk Management, participate in the training to educate them to the harmful nature of their bad faith conduct.

IV. PRAYER FOR RELIEF

WHEREFORE, PLAINTIFF seeks judgement against Defendant as follows:

1. For general damages according to proof;
2. For medical and related expenses according to proof;
3. For lost earnings and other economic losses, past and future, according to proof;
4. For interest as allowed by law;
5. For costs of suit incurred herein, including expert witness fees;
6. For attorneys' fees as allowed by law, including but not limited to California Government Code § 12965(b).
7. For injunctive relief as described above; and
8. For such other and further relief as the Court deems just and proper.

Dated: October 3, 2022

Respectfully submitted,
LAW OFFICE OF DAVID J. DUCHROW

By: s/David J. Duchrow
DAVID J. DUCHROW, Attorney for Plaintiff,
ANDREW LITHGOE

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EXHIBIT 1 TO COMPLAINT



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

August 26, 2022

Andrew Lithgoe

,

RE: Notice of Case Closure and Right to Sue
DFEH Matter Number: 202208-18047426
Right to Sue: Lithgoe / County of Los Angeles et al.

Dear Andrew Lithgoe:

This letter informs you that the above-referenced complaint filed with the Department of Fair Employment and Housing (DFEH) has been closed effective August 26, 2022 because an immediate Right to Sue notice was requested.

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.

This matter may qualify for DFEH's Small Employer Family Leave Mediation Pilot Program. Under this program, established under Government Code section 12945.21, a small employer with 5 -19 employees, charged with violation of the California Family Rights Act, Government Code section 12945.2, has the right to participate in DFEH's free mediation program. Under this program both the employee requesting an immediate right to sue and the employer charged with the violation may request that all parties participate in DFEH's free mediation program. The employee is required to contact the Department's Dispute Resolution Division prior to filing a civil action and must also indicate whether they are requesting mediation. The employee is prohibited from filing a civil action unless the Department does not initiate mediation within the time period specified in section 12945.21, subdivision (b) (4), or until the mediation is complete or is unsuccessful. The employee's statute of limitations to file a civil action, including for all related claims not arising under section 12945.2, is tolled from the date the employee contacts the Department regarding the intent to pursue legal action until the mediation is complete or is unsuccessful. Contact DFEH's Small Employer Family Leave Mediation Pilot Program by emailing DRDOnlineRequests@dfeh.ca.gov and include the DFEH matter number indicated on the Right to Sue notice.



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

To obtain a federal Right to Sue notice, you must contact 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