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9 Attorneys for PLAINTIFF **KEN MYERS**

10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
11 **FOR THE COUNTY OF SANTA CLARA**

12 KEN MYERS,  
13 Plaintiff,  
14 vs.  
15 STATE OF CALIFORNIA DEPARTMENT  
16 OF FORESTRY AND FIRE PROTECTION;  
17 TIM MAIN, an individual; and  
18 DOES 1 THROUGH 100, inclusive,  
19 Defendants.

- 20 Case No.: 23CV415053  
21 **COMPLAINT FOR DAMAGES:**  
22 (1) **ACTUAL/PERCEIVED DISABILITY**  
23 **HARASSMENT IN VIOLATION OF**  
24 **CAL. GOV. CODE §§ 12940 ET SEQ.;**  
25 (2) **ACTUAL/PERCEIVED DISABILITY**  
26 **DISCRIMINATION IN VIOLATION**  
27 **OF CAL. GOV. CODE §§ 12940 ET**  
28 **SEQ.;**  
(3) **ACTUAL/PERCEIVED DISABILITY**  
**RETALIATION IN VIOLATION OF**  
**CAL. GOV. CODE §§ 12940 ET SEQ.;**  
(4) **FAILURE TO ENGAGE IN THE**  
**INTERACTIVE PROCESS,**  
**VIOLATION OF CAL. GOV. CODE §§**  
**12940 ET SEQ.;**  
(5) **FAILURE TO ACCOMMODATE,**  
**VIOLATION OF CAL. GOV. CODE §§**  
**12940 ET SEQ.;**  
(6) **WHISTLEBLOWER VIOLATION,**  
**CAL. LABOR CODE § 1102.5;**  
(7) **INTENTIONAL INFLICTION OF**  
**EMOTIONAL DISTRESS;**

**JURY TRIAL DEMANDED**

1 COMES NOW PLAINTIFF KEN MYERS (hereinafter referred to as “Myers” or “Plaintiff”) and  
2 complains against the above-named Defendants and for causes of action against the Defendants,  
3 and each of them, as follows:  
4

5 **I.**

6 **FIRST CAUSE OF ACTION**

7 **For Actual/Perceived Physical/Mental Disability Harassment in Employment**

8 **[California Government Code §§ 12940 et seq.]**

9 **Against All Defendants, and Does 1 through 100, Inclusive**

10 1. At all times mentioned herein, Plaintiff was, and now is, an individual domiciled in the  
11 County of Fresno, State of California.

12 2. Plaintiff is informed and believes, and thereon alleges that at all times relevant herein,  
13 Defendant STATE OF CALIFORNIA DEPARTMENT OF FORESTRY AND FIRE  
14 PROTECTION (hereinafter referred to as Defendant “State Department,” and collectively with  
15 all other Defendants and DOES 1 through 100 as “Defendants”) was, and now is, a valid limited  
16 liability company organized and existing under the laws of the State of California and registered  
17 to do business in the County of Santa Clara, State of California.

18 3. At all times mentioned herein, Defendant TIM MAIN (hereinafter referred to as Defendant  
19 “Main,” and collectively with all other Defendants and DOES 1 through 100 as “Defendants”),  
20 was, and now is, an individual domiciled in the County of Santa Clara, State of California, and  
21 was a Manager, Officer, Shareholder, Director, Supervisor, Manager, Managing Agent,  
22 Supervisor, Principal, and/or Employee of Defendants.

23 4. Plaintiff is ignorant of the true names and capacities, whether corporate, associate,  
24 individual, or otherwise, of Defendants sued herein as DOES 1 - 100, inclusive, and therefore  
25 sues said Defendants by such fictitious names. Plaintiff will seek leave of Court to amend this  
26 Complaint to assert the true names and capacities of the fictitiously named Defendants when the  
27 same have been ascertained. Plaintiff is informed and believes, and thereon alleges, that each  
28 Defendant designated as “DOES” herein is legally responsible for the events, happenings, acts,  
occurrences, indebtedness, damages, and liabilities hereinafter alleged and caused injuries and

1 damages proximately thereby to the Plaintiff, as hereinafter alleged.

2 5. Plaintiff is informed and believes and thereupon alleges that Defendants and DOES 1  
3 through 100, herein are subject to such a degree of common ownership, control and management  
4 that, in doing the things hereinafter alleged, each entity, corporation and individual was the agent  
5 of each other entity, corporation and individual and is liable to Plaintiff under the law for the  
6 damages sustained by Plaintiff.

7 6. At all times mentioned herein each and every Defendant and DOES 1 through 100 was the  
8 agent, representative, employee, servant, third party under the control of Defendants, or affiliated  
9 entity of every other Defendant and, in doing the acts herein alleged, each Defendant is liable and  
10 responsible to Plaintiff for the acts of every other Defendant.

11 7. Plaintiff is informed and believes and thereupon alleges that Defendants and DOES 1  
12 through 100, and each of them, were thereafter his employers under California law, that all of the  
13 Defendants and DOES 1 through 100, herein did acts consistent with the existence of an  
14 employer-employee relationship with Plaintiff and all of the Defendants were owned and  
15 controlled, directly or indirectly, by Defendants.

16 8. Plaintiff is informed and believes and thereon alleges that each of the Defendants named  
17 herein and DOES 1 through 100, have at all times relevant to this action, been the officer, agent,  
18 employee and/or representative of the remaining Defendants and has acted within the course and  
19 scope of such agency and employment, and with the permission and consent of the co-defendants.

20 9. Plaintiff has been employed by Defendant State Department since around April 2003.

21 10. At all times relevant herein, Plaintiff was an actual, perceived, and/or potentially disabled  
22 person within the meaning of California Government Code §§ 12926.1(b) et seq., because he was  
23 a person with an actual, perceived, potentially disabling, and/or potentially disabling in the future  
24 physical/mental disability(s) including, but not limited to: stress, anxiety, depression, post-  
25 traumatic stress disorder, and melanoma.

26 11. At all times relevant herein, Defendant State Department had notice of Plaintiff's  
27 disabilities and/or need for accommodations.

28 12. Plaintiff's disabilities affect his brain and related nervous system, and his ability to perform

1 major life activities, such as working.

2 13. At all times relevant herein, as an employee disabled by a severe and debilitating  
3 physical/mental disability, Plaintiff was a member of a protected class.

4 14. At all times relevant herein, Plaintiff was qualified for and/or competently performed the  
5 position(s) held throughout his employment with Defendant State Department.

6 15. At all times relevant herein, Plaintiff was able to perform the essential functions of his  
7 job either with and/or without reasonable accommodations.

8 16. On a severe and/or pervasive basis beginning in or around January 2017 and continuing,  
9 Defendants and Does 1 through 100 harassed Plaintiff because of his actual/perceived  
10 physical/mental disabilities, need for accommodations, and requesting and/or taking legally  
11 protected medical leave through the following, among others:

12 a) In or around April 2003, Plaintiff began working for Defendant State Department  
13 in a permanent position as a Firefighter II. Beginning in or around 2010, and continuing  
14 thereafter, Defendant Tim Main openly demeaned Plaintiff behind his back, including by  
15 referring to Plaintiff as an “idiot,” and by telling other employees, “[Plaintiff] doesn’t know  
16 what he’s talking about.” This occurred whenever Defendant State Department’s  
17 employees, including Defendant Main and Plaintiff, worked with the South Santa Clara  
18 County Fire District to respond to fires. These incidents have been independently  
19 corroborated.

20 b) Although Defendant Main did not become Plaintiff’s direct supervisor until around  
21 November 2020, Defendant Main supervised Plaintiff for the majority of the time that they  
22 worked together with the South Santa Clara County Fire District. Plaintiff was promoted  
23 to Fire Captain of the Morgan Hill Fire Station in August 2011, and Defendant Main was  
24 promoted to Battalion Chief in 2012.

25 c) In or around July 2012, Plaintiff transferred from the Command Center to  
26 Defendant State Department’s fire station where Plaintiff was supervised by then-Battalion  
27 Chief Daryl Wolf. Shortly before Plaintiff’s transfer, and continuing thereafter behind  
28 Plaintiff’s back, then-Battalion Chief Daryl Wolf and Fire Captain Paul Dellanini openly

1 referred to Plaintiff as an “idiot,” and made fun of Plaintiff for having a “mental  
2 breakdown” and taking stress leave. These incidents directly evidence discriminatory  
3 animus against individuals with actual/perceived mental disabilities and have been  
4 independently corroborated.

5 d) Beginning in or around January 2017, and continuing throughout 2018, Plaintiff  
6 suffered from disabling conditions, including but not limited to stress, anxiety, depression,  
7 and PTSD. Therefore, in 2018, Plaintiff attended a mental health retreat for approximately  
8 seven days.

9 e) Later, in or around October 2020, Plaintiff began working as a part-time Logistics  
10 Officer for the Santa Clara Unit’s Service Center. Plaintiff subsequently undertook the  
11 Logistics Officer position on a full-time basis, in addition to his position as Fire Captain.  
12 As a Logistics Officer, Plaintiff routinely used a state credit card to purchase firefighter  
13 gear and supplies worth approximately \$100,000. Plaintiff was also required to complete  
14 paperwork when purchasing, distributing, or discarding firefighter gear.

15 f) Around November 2020, Battalion Chief Defendant Main transferred to the Santa  
16 Clara Unit and became Plaintiff’s direct supervisor. Thereafter, and continuing until around  
17 April 14, 2021, Plaintiff repeatedly complained and protested to Defendant Main about  
18 safety violations and state accounting issues. For example, Plaintiff constantly protested  
19 Defendant Main’s directives to purchase items with the state credit card outside of the  
20 normal purchasing process, as such purchases were impossible to track and account for.  
21 Defendant Main would also direct firefighters to obtain gear from the Service Center  
22 without completing the necessary paperwork. As such, Plaintiff complained to Defendants  
23 that Defendant Main’s directives made firefighter gear more susceptible to stealing.

24 g) In response to Plaintiff’s complaints and protests, Defendant Main repeatedly  
25 subjected Plaintiff to threatening and/or demeaning conduct, including by telling Plaintiff,  
26 “You will do it my way or get the fuck out,” directly evidencing a hostile work  
27 environment. Indeed, Defendant Main’s harassment against Plaintiff only worsened over  
28 time. For example, Defendant Main told other employees that he was “going after” Plaintiff

1 and that they should “stay away” from Plaintiff. Defendant Main also started yelling at  
2 Plaintiff whenever he addressed Plaintiff in a demeaning/threatening manner, including by  
3 yelling, “Get your fucking ass to my office now!”

4 h) Subsequently, after Plaintiff directed his complaints about safety violations and  
5 state accounting issues to Chief Marcucci, Defendant Main started telling other employees  
6 that he was “coming to get [Plaintiff’s] job,” and stating, “we’re going to hang him  
7 (Plaintiff),” further evidencing a hostile work environment.

8 i) Shortly thereafter, on or around April 15, 2021, Defendants removed Plaintiff from  
9 the Logistics Officer position. Defendant Main then began accusing Plaintiff of being a  
10 “liar” whenever Plaintiff answered any of Defendant Main’s questions.

11 j) Moreover, Defendant Main made several comments directly evidencing his  
12 discriminatory animus against individuals with actual/perceived mental disabilities, such  
13 as Plaintiff. In one instance, Defendant Main met with Plaintiff and another employee after  
14 he learned that the employee had attended the same mental health retreat as Plaintiff.  
15 Defendant Main then told the employee, “We are firemen. You burned a lot of bridges by  
16 taking that time off. You need to make it right with all of your co-workers.”

17 k) Beginning in or around April 2021, and continuing thereafter, Plaintiff sought  
18 reasonable accommodations, including by submitting multiple transfer requests in order to  
19 avoid Defendant Main’s aforementioned harassment. Defendant State Department also had  
20 notice of Plaintiff’s need for such accommodations based on Plaintiff’s internal complaints  
21 against Defendant Main. Yet, Defendant State Department denied each of Plaintiff’s  
22 requests and failed to engage in the mandatory good-faith interactive process.

23 l) For example, on or around October 16, 2021, Plaintiff requested to be transferred  
24 to a different unit and filed an internal complaint against Defendant Main, which stated the  
25 following, among others: “Chief Main has been [subjecting me to a] hostile work  
26 environment, retaliation, hazing, slander, defamation of character, threatening my job,  
27 mental anguish, falsifying that he’s a working paramedic. He has been after me since I was  
28 assigned to work in the service center...” However, Defendant State Department denied

1 Plaintiff's request and did not take any action to investigate or remediate Plaintiff's  
2 complaints about Defendant Main, thereby ratifying and condoning Defendant Main's  
3 unlawful conduct.

4 m) Indeed, on another occasion, Division Chief Dwight Good denied Plaintiff's  
5 transfer request and responded, "there's nothing we can do about it," in reference to  
6 Plaintiff's complaints regarding Defendant Main's conduct towards Plaintiff.

7 n) Additionally, beginning in or around October 2021, Plaintiff started struggling with  
8 symptoms of melanoma (skin cancer). From November 2021 through January 2022,  
9 Plaintiff took intermittent medical leave from work whenever Plaintiff sought treatment  
10 for melanoma. Throughout this time, and continuing thereafter, Defendant Main continued  
11 addressing Plaintiff in a threatening/demeaning manner, calling Plaintiff a "liar," and  
12 telling other employees to stay away from Plaintiff (as aforesaid).

13 o) Despite Plaintiff's requests and complaints about Defendant Main, Defendant State  
14 Department still refused to transfer Plaintiff to a different unit and investigate Plaintiff's  
15 internal complaints regarding Defendant Main. As a result, Plaintiff suffered from more  
16 symptoms/exacerbated symptoms of his disabilities, including but not limited to stress,  
17 anxiety, and PTSD. Indeed, Plaintiff's co-workers informed Plaintiff that they were hearing  
18 Plaintiff talk in his sleep.

19 p) Subsequently, in or around May 2022, Plaintiff failed the test that was given to him  
20 by the Employee Support Services department. Therefore, on or around May 24, 2022,  
21 Plaintiff attended another mental health retreat for approximately eight days. Yet, upon  
22 Plaintiff's return, Defendant State Department still refused to adequately investigate and  
23 remediate Plaintiff's internal complaints, thereby ratifying and condoning the hostile work  
24 environment.

25 q) Then, on or around June 17, 2022, Defendant State Department notified Plaintiff  
26 that he was being demoted from Fire Captain to Firefighter II, in part because of Defendant  
27 Main's false accusations of patient abandonment, related to an emergency response that  
28 occurred on July 21, 2021. Specifically, Defendant Main falsely alleged that Engineer Josh

1 Manley failed to complete appropriate paperwork, and thus, Plaintiff was also at fault for  
2 the purported failure because Engineer Manley was Plaintiff's subordinate. Subsequently,  
3 a Skelly Review Officer determined that Defendant Main's false allegations were  
4 unfounded, and thus, Defendants provided Engineer Manley with back pay and removed  
5 Engineer Manley's suspension from his record. However, Defendant State Department  
6 refused to reinstate Plaintiff back to his position as Fire Captain.

7 r) Defendants also justified Plaintiff's demotion by claiming that Plaintiff subjected  
8 the Department to unnecessary liability when Plaintiff allowed Firefighters to sleep off site  
9 while on duty. Defendant State Department claimed that, by doing so, Plaintiff jeopardized  
10 public safety by potentially delaying response times. Specifically, Defendant State  
11 Department referenced one instance that occurred on July 19, 2021, when Plaintiff  
12 permitted two Firefighters to sleep at a nearby hotel while they were on duty. Yet, since at  
13 least 2011, and continuing thereafter until at least late-2021, it was common practice for  
14 Firefighters to sleep off site while on duty. Battalion Chiefs and Fire Captains even  
15 permitted Firefighters to sleep at home while they were on duty, as long as they would be  
16 able to return to the Morgan Hill Fire Station within one hour after being called to return.  
17 These practices have been independently corroborated.

18 s) Further, Defendant State Department justified Plaintiff's demotion by falsely  
19 accusing Plaintiff of providing dishonest statements during the Department's  
20 administrative investigations into the aforementioned incidents. Yet, these false  
21 accusations were partially based on statements that were provided by some of the  
22 individuals who subsequently celebrated Plaintiff's demotion with an ice cream and cake  
23 party (described below).

24 t) Egregiously, on or around June 24, 2022, Defendant Main held an ice cream and  
25 cake party at the Morgan Hill Fire Station to celebrate Plaintiff's demotion, further  
26 evidencing a hostile work environment. During the party, which was attended by the  
27 station's employees and Fire Captains from other fire stations, Defendant Main boldly  
28 admitted that he was "singling out" Plaintiff and "trying to get him fired."



1 u) Shortly thereafter, Defendant Main shared a picture of the party in a text message  
2 thread with Fire Captains and Engineers. In the text message thread, Fire Captain Gil  
3 Rodriguez stated, “I don’t eat sweets but dang that was the best cake ever,” to which  
4 Defendant Main responded, “Yes it was.” Fire Captain Herb Alpers, who worked with Fire  
5 Captain Rodriguez at another fire station, then responded, “Aww man I woulda came down  
6 for that!!!! FUCK YEAH,” to which Engineer Anthony Rhoades responded, “It’s a fucking  
7 party. You guys are too funny.” Subsequently, Plaintiff’s co-worker conveyed information  
8 about Defendants’ celebrations to Plaintiff because his co-worker felt uncomfortable about  
9 participating.

10 v) Therefore, on or around August 11, 2022, Plaintiff filed an internal complaint  
11 against the individuals who “celebrated” his demotion, including Defendant Main, Fire  
12 Captain Ryan Connolly, Fire Captain Gil Rodriguez, and Mechanic Kevin Murray.  
13 Plaintiff again complained of stress and mental anguish, yet unsurprisingly, Defendants did  
14 not take any action to investigate and remediate Plaintiff’s complaints.

15 w) At least through April 21, 2023, and continuing, Defendants and DOES 1 through  
16 100 failed and/or refused to investigate Plaintiff’s complaints and take appropriate remedial  
17 action.

18 17. At all times relevant herein, Plaintiff believes and further alleges that Defendant State  
19 Department and/or its agents/representatives failed to timely, properly, and/or completely  
20 investigate the unlawful harassment Plaintiff was routinely subjected to, and instead ratified and  
21 condoned the unlawful harassment.

22 18. In doing the acts alleged herein, Defendants and DOES 1 through 100, and each of them,  
23 were substantially motivated by Plaintiff’s actual/perceived disabilities, need for  
24 accommodations, and/or need for legally protected finite medical leave.

25 19. A reasonable person in Plaintiff’s circumstances would have considered the work  
26 environment to be hostile or abusive.

27 20. Plaintiff considered the work environment to be hostile or abusive toward Plaintiff.  
28

1 21. The acts and conduct of Defendant and DOES 1 through 100, and each of them, as  
2 aforesaid, were in violation of Cal. Government Code §§ 12940 et seq. Said statutes impose  
3 certain duties upon Defendants concerning harassment against persons, such as Plaintiff, on the  
4 basis of actual/perceived disabilities and the prohibition of actual/perceived disability  
5 harassment. Said statutes were intended to prevent the type of disability and damage herein set  
6 forth.

7 22. By the acts and conduct described above, Defendants and DOES 1 through 100, and each  
8 of them, in violation of said statutes, knew about, or should have known about, and failed to  
9 investigate and/or properly investigate, prevent or remedy the actual/perceived disability  
10 harassment.

11 23. Prior to the initiation of this lawsuit, Plaintiff filed a timely complaint against each named  
12 Defendant with the Civil Rights Department (f/k/a DFEH) pursuant to Cal. Government Code §  
13 12900 et seq. and has received Right-to-Sue notices in a California Superior Court pursuant to  
14 California Government Code § 12965(b). Attached hereto and incorporated herein as Exhibit "A"  
15 are said Complaints and by reference hereto are made a part hereof. Attached hereto and  
16 incorporated herein as Exhibit "B" are said Right-to-Sue notices and by reference hereto are made  
17 a part hereof. Plaintiff also filed a timely tort claim against each named Defendant with the  
18 Government Claims Program pursuant to Cal. Government Code §§ 900 et seq. and has received  
19 a Tort Claim Rejection pursuant to Cal. Government Code § 945.4. Attached hereto and  
20 incorporated herein as Exhibit "C" is said Rejection and by reference hereto are made a part  
21 hereof. Plaintiff has therefore exhausted Plaintiff's administrative remedies under the California  
22 Government Code.

23 24. As a direct and legal result of the acts and omissions of Defendants and DOES 1 through  
24 100, Plaintiff was rendered sick, sore, lame, disabled and/or disordered, both internally and/or  
25 externally, and/or suffered, among other things, numerous internal injuries, severe fright, shock,  
26 pain, discomfort and/or anxiety.

27 25. As a further legal result of the acts and omissions of Defendants and DOES 1 through 100,  
28 Plaintiff has been forced and/or may be forced to incur expenses for medical care, X-rays, and/or

1 laboratory costs during the period of Plaintiff's disability, and/or is informed and believes, and  
2 thereon alleges, that Plaintiff may in the future be forced to incur additional expenses of the same  
3 nature, all in an amount which is at present unknown. Plaintiff will pray leave of court to show  
4 the exact amount of said expenses at the time of trial.

5 26. Prior to the occurrence of the incidents, Plaintiff was an able-bodied individual, but since  
6 said incidents has or may have been unable to engage fully and/or partially in Plaintiff's  
7 occupation, and is informed and believes, and thereon alleges, that Plaintiff may be fully and/or  
8 partially incapacitated and/or unable to perform Plaintiff's usual work for an indefinite period of  
9 time in the future, all to Plaintiff's damage in an amount which is at present unascertained.  
10 Plaintiff will pray leave of court to show the total amount of loss of earnings at the time of trial.

11 27. As a further direct and legal result of the acts and conduct of Defendants and DOES 1  
12 through 100, Plaintiff has been caused, and did suffer, and continues to suffer severe and  
13 permanent emotional and/or mental distress and/or anguish, humiliation, embarrassment, fright,  
14 shock, pain, discomfort and/or anxiety. The exact nature and extent of said injuries is presently  
15 unknown to Plaintiff, who will pray leave of court to assert the same when they are ascertained.

16 28. The aforementioned acts of Defendants and DOES 1 through 100, and each of them, were  
17 willful, wanton, malicious, intentional, oppressive and/or despicable and were done in willful and  
18 conscious disregard of the rights, welfare and safety of Plaintiff, and were done by managerial  
19 agents and employees of Defendants, and with the express knowledge, consent, and/or ratification  
20 of managerial agents and employees of Defendants, thereby justifying the awarding of punitive  
21 and exemplary damages in an amount to be determined at the time of trial pursuant to California  
22 Civil Code § 3294(a) and (b).

23 29. By the aforesaid acts and conduct of Defendants and DOES 1 through 100, Plaintiff has  
24 been directly and legally caused to suffer actual damages pursuant to California Civil Code §  
25 3333 including, but not limited to, loss of earnings and future earning capacity, medical and  
26 related expenses for care and procedures both now and in the future, attorneys' fees, and other  
27 pecuniary loss not presently ascertained, for which Plaintiff will seek leave of court to amend  
28 when ascertained.

1 30. As a result of the unlawful acts of Defendants and DOES 1 through 100, as alleged herein,  
2 Plaintiff is entitled to reasonable attorneys' fees and costs of said suit as specifically provided in  
3 California Government Code § 12965(b).

4 31. The FEHA also provides remedies, including but not limited to, declaratory and injunctive  
5 relief. As such, Plaintiff is entitled to both declaratory and injunctive relief as a result of  
6 Defendants' conduct.

7 32. Plaintiff has been damaged in an amount within the jurisdictional limits of this Court.

8 **II.**

9 **SECOND CAUSE OF ACTION**

10 **For Actual/Perceived Physical/Mental Disability Discrimination in Employment**

11 **[California Government Code §§ 12940 et seq.]**

12 **Against Defendant State Department and Does 1 through 100, Inclusive**

13 33. Plaintiff incorporates herein by reference and re-alleges each and every paragraph in this  
14 Complaint as though duly set forth in full herein.

15 34. Plaintiff has been employed by Defendant State Department since around April 2003.

16 35. At all times relevant herein, Plaintiff was an actual, perceived, and/or potentially disabled  
17 person within the meaning of California Government Code §§ 12926.1(b) et seq., because he was  
18 a person with an actual, perceived, potentially disabling, and/or potentially disabling in the future  
19 physical/mental disability(s) including, but not limited to: stress, anxiety, depression, post-  
20 traumatic stress disorder, and melanoma.

21 36. At all times relevant herein, Defendant State Department had notice of Plaintiff's  
22 disabilities and/or need for accommodations.

23 37. Plaintiff's disabilities affect his brain and related nervous system, and his ability to perform  
24 major life activities, such as working.

25 38. At all times relevant herein, as an employee disabled by a severe and debilitating  
26 physical/mental disability, Plaintiff was a member of a protected class.

27 39. At all times relevant herein, Plaintiff was qualified for and/or competently performed the  
28 position(s) held throughout his employment with Defendant State Department.

1 40. At all times relevant herein, Plaintiff was able to perform the essential functions of his  
2 job either with and/or without reasonable accommodations.

3 41. Beginning in or around January 2017 and continuing, as a result of and substantially  
4 motivated by Plaintiff's actual/perceived disabilities, need for accommodations, and/or need for  
5 protected finite leave, Defendant State Department and DOES 1 through 100, and each of them,  
6 subjected Plaintiff to different, disparate, and negative treatment and/or adverse employment  
7 actions, including the following actions, among others:

8 a) In or around April 2003, Plaintiff began working for Defendant State Department  
9 in a permanent position as a Firefighter II. Beginning in or around 2010, and continuing  
10 thereafter, Defendant Tim Main openly demeaned Plaintiff behind his back, including by  
11 referring to Plaintiff as an "idiot," and by telling other employees, "[Plaintiff] doesn't know  
12 what he's talking about." This occurred whenever Defendant State Department's  
13 employees, including Defendant Main and Plaintiff, worked with the South Santa Clara  
14 County Fire District to respond to fires. These incidents have been independently  
15 corroborated.

16 b) Although Defendant Main did not become Plaintiff's direct supervisor until around  
17 November 2020, Defendant Main supervised Plaintiff for the majority of the time that they  
18 worked together with the South Santa Clara County Fire District. Plaintiff was promoted  
19 to Fire Captain of the Morgan Hill Fire Station in August 2011, and Defendant Main was  
20 promoted to Battalion Chief in 2012.

21 c) In or around July 2012, Plaintiff transferred from the Command Center to  
22 Defendant State Department's fire station where Plaintiff was supervised by then-Battalion  
23 Chief Daryl Wolf. Shortly before Plaintiff's transfer, and continuing thereafter behind  
24 Plaintiff's back, then-Battalion Chief Daryl Wolf and Fire Captain Paul Dellanini openly  
25 referred to Plaintiff as an "idiot," and made fun of Plaintiff for having a "mental  
26 breakdown" and taking stress leave. These incidents directly evidence discriminatory  
27 animus against individuals with actual/perceived mental disabilities and have been  
28 independently corroborated.

1 d) Beginning in or around January 2017, and continuing throughout 2018, Plaintiff  
2 suffered from disabling conditions, including but not limited to stress, anxiety, depression,  
3 and PTSD. Therefore, in 2018, Plaintiff attended a mental health retreat for approximately  
4 seven days.

5 e) Later, in or around October 2020, Plaintiff began working as a part-time Logistics  
6 Officer for the Santa Clara Unit's Service Center. Plaintiff subsequently undertook the  
7 Logistics Officer position on a full-time basis, in addition to his position as Fire Captain.  
8 As a Logistics Officer, Plaintiff routinely used a state credit card to purchase firefighter  
9 gear and supplies worth approximately \$100,000. Plaintiff was also required to complete  
10 paperwork when purchasing, distributing, or discarding firefighter gear.

11 f) Around November 2020, Battalion Chief Defendant Main transferred to the Santa  
12 Clara Unit and became Plaintiff's direct supervisor. Thereafter, and continuing until around  
13 April 14, 2021, Plaintiff repeatedly complained and protested to Defendant Main about  
14 safety violations and state accounting issues. For example, Plaintiff constantly protested  
15 Defendant Main's directives to purchase items with the state credit card outside of the  
16 normal purchasing process, as such purchases were impossible to track and account for.  
17 Defendant Main would also direct firefighters to obtain gear from the Service Center  
18 without completing the necessary paperwork. As such, Plaintiff complained to Defendants  
19 that Defendant Main's directives made firefighter gear more susceptible to stealing.

20 g) In response to Plaintiff's complaints and protests, Defendant Main repeatedly  
21 subjected Plaintiff to threatening and/or demeaning conduct, including by telling Plaintiff,  
22 "You will do it my way or get the fuck out." Indeed, Defendant Main's harassment against  
23 Plaintiff only worsened over time. For example, Defendant Main told other employees that  
24 he was "going after" Plaintiff and that they should "stay away" from Plaintiff, evidencing  
25 discriminatory animus. Defendant Main also started yelling at Plaintiff whenever he  
26 addressed Plaintiff in a demeaning/threatening manner, including by yelling, "Get your  
27 fucking ass to my office now!"

28 h) Subsequently, after Plaintiff directed his complaints about safety violations and

1 state accounting issues to Chief Marcucci, Defendant Main started telling other employees  
2 that he was “coming to get [Plaintiff’s] job,” and stating, “we’re going to hang him  
3 (Plaintiff),” further evidencing discriminatory animus.

4 i) Shortly thereafter, on or around April 15, 2021, Defendants removed Plaintiff from  
5 the Logistics Officer position. Defendant Main then began accusing Plaintiff of being a  
6 “liar” whenever Plaintiff answered any of Defendant Main’s questions.

7 j) Moreover, Defendant Main made several comments directly evidencing his  
8 discriminatory animus against individuals with actual/perceived mental disabilities, such  
9 as Plaintiff. In one instance, Defendant Main met with Plaintiff and another employee after  
10 he learned that the employee had attended the same mental health retreat as Plaintiff.  
11 Defendant Main then told the employee, “We are firemen. You burned a lot of bridges by  
12 taking that time off. You need to make it right with all of your co-workers.”

13 k) Beginning in or around April 2021, and continuing thereafter, Plaintiff sought  
14 reasonable accommodations, including by submitting multiple transfer requests in order to  
15 avoid Defendant Main’s aforementioned harassment. Defendant State Department also had  
16 notice of Plaintiff’s need for such accommodations based on Plaintiff’s internal complaints  
17 against Defendant Main. Yet, Defendant State Department denied each of Plaintiff’s  
18 requests and failed to engage in the mandatory good-faith interactive process.

19 l) For example, on or around October 16, 2021, Plaintiff requested to be transferred  
20 to a different unit and filed an internal complaint against Defendant Main, which stated the  
21 following, among others: “Chief Main has been [subjecting me to a] hostile work  
22 environment, retaliation, hazing, slander, defamation of character, threatening my job,  
23 mental anguish, falsifying that he’s a working paramedic. He has been after me since I was  
24 assigned to work in the service center...” However, Defendant State Department denied  
25 Plaintiff’s request and did not take any action to investigate or remediate Plaintiff’s  
26 complaints about Defendant Main, thereby ratifying and condoning Defendant Main’s  
27 unlawful conduct.  
28

1 m) Indeed, on another occasion, Division Chief Dwight Good denied Plaintiff's  
2 transfer request and responded, "there's nothing we can do about it," in reference to  
3 Plaintiff's complaints regarding Defendant Main's conduct towards Plaintiff.

4 n) Additionally, beginning in or around October 2021, Plaintiff started struggling with  
5 symptoms of melanoma (skin cancer). From November 2021 through January 2022,  
6 Plaintiff took intermittent medical leave from work whenever Plaintiff sought treatment  
7 for melanoma. Throughout this time, and continuing thereafter, Defendant Main continued  
8 treating Plaintiff disparately and negatively, including by addressing Plaintiff in a  
9 threatening/demeaning manner, calling Plaintiff a "liar," and telling other employees to  
10 stay away from Plaintiff (as aforesaid).

11 o) Despite Plaintiff's requests and complaints about Defendant Main, Defendant State  
12 Department still refused to transfer Plaintiff to a different unit and investigate Plaintiff's  
13 internal complaints regarding Defendant Main. As a result, Plaintiff suffered from more  
14 symptoms/exacerbated symptoms of his disabilities, including but not limited to stress,  
15 anxiety, and PTSD. Indeed, Plaintiff's co-workers informed Plaintiff that they were hearing  
16 Plaintiff talk in his sleep.

17 p) Subsequently, in or around May 2022, Plaintiff failed the test that was given to him  
18 by the Employee Support Services department. Therefore, on or around May 24, 2022,  
19 Plaintiff attended another mental health retreat for approximately eight days. Yet, upon  
20 Plaintiff's return, Defendant State Department still refused to adequately investigate and  
21 remediate Plaintiff's internal complaints, thereby ratifying and condoning Defendant  
22 Main's aforementioned harassment and disparate treatment towards Plaintiff.

23 q) Then, on or around June 17, 2022, Defendant State Department notified Plaintiff  
24 that he was being demoted from Fire Captain to Firefighter II, in part because of Defendant  
25 Main's false accusations of patient abandonment, related to an emergency response that  
26 occurred on July 21, 2021. Specifically, Defendant Main falsely alleged that Engineer Josh  
27 Manley failed to complete appropriate paperwork, and thus, Plaintiff was also at fault for  
28 the purported failure because Engineer Manley was Plaintiff's subordinate. Subsequently,



1 a Skelly Review Officer determined that Defendant Main’s false allegations were  
2 unfounded, and thus, Defendants provided Engineer Manley with back pay and removed  
3 Engineer Manley’s suspension from his record. However, Defendant State Department  
4 refused to reinstate Plaintiff back to his position as Fire Captain.

5 r) Defendants also justified Plaintiff’s demotion by claiming that Plaintiff subjected  
6 the Department to unnecessary liability when Plaintiff allowed Firefighters to sleep off site  
7 while on duty. Defendant State Department claimed that, by doing so, Plaintiff jeopardized  
8 public safety by potentially delaying response times. Specifically, Defendant State  
9 Department referenced one instance that occurred on July 19, 2021, when Plaintiff  
10 permitted two Firefighters to sleep at a nearby hotel while they were on duty. Yet, since at  
11 least 2011, and continuing thereafter until at least late-2021, it was common practice for  
12 Firefighters to sleep off site while on duty. Battalion Chiefs and Fire Captains even  
13 permitted Firefighters to sleep at home while they were on duty, as long as they would be  
14 able to return to the Morgan Hill Fire Station within one hour after being called to return.  
15 These practices have been independently corroborated.

16 s) Further, Defendant State Department justified Plaintiff’s demotion by falsely  
17 accusing Plaintiff of providing dishonest statements during the Department’s  
18 administrative investigations into the aforementioned incidents. Yet, these false  
19 accusations were partially based on statements that were provided by some of the  
20 individuals who subsequently celebrated Plaintiff’s demotion with an ice cream and cake  
21 party (described below).

22 t) Egregiously, on or around June 24, 2022, Defendant Main held an ice cream and  
23 cake party at the Morgan Hill Fire Station to celebrate Plaintiff’s demotion, further  
24 evidencing Defendants’ discriminatory animus. During the party, which was attended by  
25 the station’s employees and Fire Captains from other fire stations, Defendant Main boldly  
26 admitted that he was “singling out” Plaintiff and “trying to get him fired.”

27 u) Shortly thereafter, Defendant Main shared a picture of the party in a text message  
28 thread with Fire Captains and Engineers. In the text message thread, Fire Captain Gil

1 Rodriguez stated, “I don’t eat sweets but dang that was the best cake ever,” to which  
2 Defendant Main responded, “Yes it was.” Fire Captain Herb Alpers, who worked with Fire  
3 Captain Rodriguez at another fire station, then responded, “Aww man I woulda came down  
4 for that!!!! FUCK YEAH,” to which Engineer Anthony Rhoades responded, “It’s a fucking  
5 party. You guys are too funny.” Subsequently, Plaintiff’s co-worker conveyed information  
6 about Defendants’ celebrations to Plaintiff because his co-worker felt uncomfortable about  
7 participating.

8 v) Therefore, on or around August 11, 2022, Plaintiff filed an internal complaint  
9 against the individuals who “celebrated” his demotion, including Defendant Main, Fire  
10 Captain Ryan Connolly, Fire Captain Gil Rodriguez, and Mechanic Kevin Murray.  
11 Plaintiff again complained of stress and mental anguish, yet unsurprisingly, Defendants did  
12 not take any action to investigate and remediate Plaintiff’s complaints.

13 w) At least through April 21, 2023, and continuing, Defendants and DOES 1 through  
14 100 failed and/or refused to investigate Plaintiff’s complaints and take appropriate remedial  
15 action.

16 42. In doing the acts alleged herein, Defendants and DOES 1 through 100, and each of them,  
17 were substantially motivated by Plaintiff’s actual/perceived disabilities, need for  
18 accommodations, and/or need for legally protected finite medical leave.

19 43. At all times relevant herein, Plaintiff believes and further alleges that Defendant State  
20 Department and/or its agents/representatives failed to timely, properly, and/or completely  
21 investigate the actual/perceived disability discrimination Plaintiff was routinely subjected to and  
22 ratified and condoned the unlawful behavior.

23 44. The acts and conduct of Defendants and DOES 1 through 100, and each of them, as  
24 aforesaid, were in violation of Cal. Gov. Code §§ 12940 et seq. Said statutes impose certain  
25 duties upon Defendant State Department concerning discrimination against persons, such as  
26 Plaintiff, on the basis of disabilities and the prohibition of disability discrimination. Said  
27 statutes were intended to prevent the type of injury and damage herein set forth.  
28

1 45. By the acts and conduct described above, Defendants and DOES 1 through 100, and each  
2 of them, in violation of said statutes, knew about, or should have known about, and failed to  
3 investigate and/or properly investigate, prevent, or remedy the disability discrimination. When  
4 Plaintiff was discriminated against, Plaintiff's actual/perceived disability(s) were substantial  
5 motivating reasons and/or factors in Defendants' conduct.

6 46. Prior to the initiation of this lawsuit, Plaintiff filed a timely complaint against each named  
7 Defendant with the Civil Rights Department (f/k/a DFEH) pursuant to Cal. Government Code §  
8 12900 et seq. and has received Right-to-Sue notices in a California Superior Court pursuant to  
9 California Government Code § 12965(b). Attached hereto and incorporated herein as Exhibit "A"  
10 are said Complaints and by reference hereto are made a part hereof. Attached hereto and  
11 incorporated herein as Exhibit "B" are said Right-to-Sue notices and by reference hereto are made  
12 a part hereof. Plaintiff also filed a timely tort claim against each named Defendant with the  
13 Government Claims Program pursuant to Cal. Government Code §§ 900 et seq. and has received  
14 a Tort Claim Rejection pursuant to Cal. Government Code § 945.4. Attached hereto and  
15 incorporated herein as Exhibit "C" is said Rejection and by reference hereto are made a part  
16 hereof. Plaintiff has therefore exhausted Plaintiff's administrative remedies under the California  
17 Government Code.

18 47. As a direct and legal result of the acts and omissions of Defendants and DOES 1 through  
19 100, Plaintiff was rendered sick, sore, lame, disabled and/or disordered, both internally and/or  
20 externally, and/or suffered, among other things, numerous internal injuries, severe fright, shock,  
21 pain, discomfort and/or anxiety.

22 48. As a further legal result of the acts and omissions of Defendants and DOES 1 through  
23 100, Plaintiff has been forced and/or may be forced to incur expenses for medical care, X-rays,  
24 and/or laboratory costs during the period of Plaintiff's disability, and/or is informed and  
25 believes, and thereon alleges, that Plaintiff may in the future be forced to incur additional  
26 expenses of the same nature, all in an amount which is at present unknown. Plaintiff will pray  
27 leave of court to show the exact amount of said expenses at the time of trial.  
28

1 49. Prior to the occurrence of the incidents, Plaintiff was an able-bodied individual, but since  
2 said incidents may have been unable to engage fully and/or partially in Plaintiff's occupation,  
3 and is informed and believes, and thereon alleges, that Plaintiff may be fully and/or partially  
4 incapacitated and/or unable to perform Plaintiff's usual work for an indefinite period of time in  
5 the future, all to Plaintiff's damage in an amount which is at present unascertained. Plaintiff will  
6 pray leave of court to show the total amount of loss of earnings at the time of trial.

7 50. As a further direct and legal result of the acts and conduct of Defendants and DOES 1  
8 through 100, Plaintiff has been caused, and did suffer, and continues to suffer severe and  
9 permanent emotional and/or mental distress and/or anguish, humiliation, embarrassment, fright,  
10 shock, pain, discomfort and/or anxiety. The exact nature and extent of said injuries is presently  
11 unknown to Plaintiff, who will pray leave of court to assert the same when they are ascertained.

12 51. The aforementioned acts of Defendants and DOES 1 through 100, and each of them, were  
13 willful, wanton, malicious, intentional, oppressive and/or despicable and were done in willful  
14 and conscious disregard of the rights, welfare and safety of Plaintiff, and were done by  
15 managerial agents and employees of Defendant State Department and DOES 1 through 100, and  
16 with the express knowledge, consent, and/or ratification of managerial agents and employees of  
17 Defendant State Department and DOES 1 through 100, thereby justifying the awarding of  
18 punitive and exemplary damages in an amount to be determined at the time of trial pursuant to  
19 California Civil Code § 3294(a) and (b).

20 52. By the aforesaid acts and conduct of Defendants and DOES 1 through 100, Plaintiff has  
21 been directly and legally caused to suffer actual damages pursuant to California Civil Code §  
22 3333 including, but not limited to, loss of earnings and future earning capacity, medical and  
23 related expenses for care and procedures both now and in the future, attorneys' fees, and other  
24 pecuniary loss not presently ascertained, for which Plaintiff will seek leave of court to amend  
25 when ascertained.

26 53. As a result of the discriminatory acts of Defendants and DOES 1 through 100, as alleged  
27 herein, Plaintiff is entitled to reasonable attorneys' fees and costs of said suit as specifically  
28 provided in California Government Code § 12965(b).

1 54. The FEHA also provides remedies, including but not limited to, declaratory and  
2 injunctive relief. As such, Plaintiff is entitled to both declaratory and injunctive relief as a result  
3 of Defendants' unlawful conduct.

4 55. Plaintiff has been damaged in an amount within the jurisdictional limits of this Court.

5 **III.**

6 **THIRD CAUSE OF ACTION**

7 **For Actual/Perceived Physical/Mental Disability Retaliation in Employment**

8 **[California Government Code §§ 12940 et seq.]**

9 **Against Defendant State Department and Does 1 through 100, Inclusive**

10 56. Plaintiff incorporates herein by reference and re-alleges each and every paragraph in this  
11 Complaint as though duly set forth in full herein.

12 57. Plaintiff has been employed by Defendant State Department since around April 2003.

13 58. At all times relevant herein, Plaintiff was an actual, perceived, and/or potentially disabled  
14 person within the meaning of California Government Code §§ 12926.1(b) et seq., because he was  
15 a person with an actual, perceived, potentially disabling, and/or potentially disabling in the future  
16 physical/mental disability(s) including, but not limited to: stress, anxiety, depression, post-  
17 traumatic stress disorder, and melanoma.

18 59. Plaintiff's disabilities affect his brain and related nervous system, and his ability to  
19 perform major life activities, such as working.

20 60. Beginning in or around January 2017 and continuing, Defendant State Department  
21 retaliated against Plaintiff as a result of Plaintiff asserting his legal rights and/or complaining  
22 about and /or protesting against the actual/perceived disability harassment and discrimination  
23 Plaintiff was subjected to. Plaintiff asserted his legal rights and engaged in protected activity by  
24 protesting and/or complaining on the following occasions, among others:

- 25 a) Beginning on or around January 2017, and continuing throughout 2018, Plaintiff  
26 suffered from disabling conditions, including but not limited to stress, anxiety, depression,  
27 and PTSD. Plaintiff's conditions were further exacerbated after Defendant State  
28 Department suspended Plaintiff for six days for purportedly failing to report other

1 employees' violations of the Department's policies. Therefore, in 2018, Defendant State  
2 Department sent Plaintiff to a mental health retreat for approximately seven days.

3 b) Around November 2020, Defendant Battalion Chief Tim Main transferred to the  
4 Santa Clara Unit and became Plaintiff's supervisor. Thereafter, and continuing until around  
5 April 14, 2021, Plaintiff repeatedly complained and protested to Defendant Main about  
6 safety violations and state accounting issues. For example, Plaintiff constantly protested  
7 Defendant Main's directives to purchase items with the state credit card outside of the  
8 normal purchasing process, as such purchases were impossible to track and account for.  
9 Defendant Main would also direct firefighters to obtain gear from the Service Center  
10 without completing the necessary paperwork. As such, Plaintiff complained to Defendants  
11 that Defendant Main's directives made firefighter gear more susceptible to stealing.

12 c) Due to Defendant Main's refusal to remediate Plaintiff's complaints and protests,  
13 Plaintiff began directing his complaints about safety violations and state accounting issues  
14 to Chief Marcucci.

15 d) Beginning in or around April 2021, and continuing thereafter, Plaintiff sought  
16 reasonable accommodations, including by submitting multiple transfer requests in order to  
17 avoid Defendant Main's aforementioned unlawful conduct. Defendant State Department  
18 also had notice of Plaintiff's need for such accommodations based on Plaintiff's internal  
19 complaints against Defendant Main. For example, on or around October 16, 2021, Plaintiff  
20 requested to be transferred to a different unit and filed an internal complaint against  
21 Defendant Main, which stated the following, among others: "Chief Main has been  
22 [subjecting me to a] hostile work environment, retaliation, hazing, slander, defamation of  
23 character, threatening my job, mental anguish, falsifying that he's a working paramedic.  
24 He has been after me since I was assigned to work in the service center..."

25 e) On or around May 24, 2022, after Plaintiff failed the test that was given to him by  
26 the Employee Support Services department, Plaintiff attended another mental health retreat  
27 for approximately eight days.

28 f) Later, on or around August 11, 2022, Plaintiff filed an internal complaint against

1 the individuals who “celebrated” his demotion, including Defendant Main, Fire Captain  
2 Ryan Connolly, Fire Captain Gil Rodriguez, and Mechanic Kevin Murray. Plaintiff again  
3 complained of stress and mental anguish, among others.

4 61. As a result of and substantially motivated by Plaintiff engaging in the aforesaid protected  
5 activities, Defendant State Department subjected Plaintiff to retaliatory adverse employment  
6 actions, including the following, among others:

7 a) In response to Plaintiff’s aforementioned complaints and protests, Defendant Main  
8 repeatedly subjected Plaintiff to threatening and/or demeaning conduct, including by  
9 telling Plaintiff, “You will do it my way or get the fuck out.” Indeed, Defendant Main’s  
10 conduct towards Plaintiff only worsened over time. For example, Defendant Main told  
11 other employees that he was “going after” Plaintiff and that they should “stay away” from  
12 Plaintiff. Defendant Main also started yelling at Plaintiff whenever he addressed Plaintiff  
13 in a demeaning/threatening manner, including by yelling, “Get your fucking ass to my  
14 office now!”

15 b) Subsequently, after Plaintiff directed his complaints to Chief Marcucci, Defendant  
16 Main started telling other employees that he was “coming to get [Plaintiff’s] job,” and  
17 stating, “we’re going to hang him (Plaintiff),” evidencing a hostile work environment and  
18 disparate treatment.

19 c) On or around April 15, 2021, due to Plaintiff’s repeated complaints and protests to  
20 Defendants about safety violations and state accounting issues, Defendants removed  
21 Plaintiff from the Logistics Officer position.

22 d) On or around June 17, 2022, Defendant State Department notified Plaintiff that he  
23 was being demoted from Fire Captain to Firefighter II, in part because of Defendant Main’s  
24 false accusations of patient abandonment, related to an emergency response that occurred  
25 on July 21, 2021. Specifically, Defendant Main falsely alleged that Engineer Josh Manley  
26 failed to complete appropriate paperwork, and thus, Plaintiff was also at fault for the  
27 purported failure because Engineer Manley was Plaintiff’s subordinate. Subsequently, a  
28 Skelly Review Officer determined that Defendant Main’s false allegations were

1 unfounded, and thus, Defendants provided Engineer Manley with back pay and removed  
2 Engineer Manley's suspension from his record. However, Defendant State Department  
3 refused to reinstate Plaintiff back to his position as Fire Captain.

4 e) Defendants also justified Plaintiff's demotion by claiming that Plaintiff subjected  
5 the Department to unnecessary liability when Plaintiff allowed Firefighters to sleep off site  
6 while on duty. Defendant State Department claimed that, by doing so, Plaintiff jeopardized  
7 public safety by potentially delaying response times. Specifically, Defendant State  
8 Department referenced one instance that occurred on July 19, 2021, when Plaintiff  
9 permitted two Firefighters to sleep at a nearby hotel while they were on duty. Yet, since at  
10 least 2011, and continuing thereafter until at least late-2021, it was common practice for  
11 Firefighters to sleep off site while on duty. Battalion Chiefs and Fire Captains even  
12 permitted Firefighters to sleep at home while they were on duty, as long as they would be  
13 able to return to the Morgan Hill Fire Station within one hour after being called to return.  
14 These practices have been independently corroborated.

15 f) Further, Defendant State Department justified Plaintiff's demotion by falsely  
16 accusing Plaintiff of providing dishonest statements during the Department's  
17 administrative investigations into the aforementioned incidents. Yet, these false  
18 accusations were partially based on statements that were provided by some of the  
19 individuals who subsequently celebrated Plaintiff's demotion with an ice cream and cake  
20 party (described below).

21 g) Eggregiously, on or around June 24, 2022, Defendant Main held an ice cream and  
22 cake party at the Morgan Hill Fire Station to celebrate Plaintiff's demotion, further  
23 evidencing a hostile work environment. During the party, which was attended by the  
24 station's employees and Fire Captains from other fire stations, Defendant Main boldly  
25 admitted that he was "singling out" Plaintiff and "trying to get him fired." Shortly  
26 thereafter, Defendant Main shared a picture of the party in a text message thread with Fire  
27 Captains and Engineers. In the text message thread, Fire Captain Gil Rodriguez stated, "I  
28 don't eat sweets but dang that was the best cake ever," to which Defendant Main responded,



1 “Yes it was.” Fire Captain Herb Alpers, who worked with Fire Captain Rodriguez at  
2 another fire station, then responded, “Aww man I woulda came down for that!!!! FUCK  
3 YEAH,” to which Engineer Anthony Rhoades responded, “It’s a fucking party. You guys  
4 are too funny.” Subsequently, Plaintiff’s co-worker conveyed information about  
5 Defendants’ celebrations to Plaintiff because his co-worker felt uncomfortable about  
6 participating.

7 h) Throughout Plaintiff’s employment, beginning at least since April 2021, and  
8 continuing, Defendants have failed to adequately investigate and remediate Plaintiff’s  
9 complaints. Defendants have also denied Plaintiff’s requests for reasonable  
10 accommodations, including Plaintiff’s transfer requests, despite Defendants’ notice of  
11 Plaintiff’s need for such accommodations (as aforesaid). On at least one occasion, Division  
12 Chief Dwight Good denied Plaintiff’s transfer request and responded, “there’s nothing we  
13 can do about it,” in reference to Plaintiff’s complaints regarding Defendant Main’s conduct  
14 towards Plaintiff. As such, Defendant State Department ratified and condoned Defendants’  
15 aforementioned unlawful conduct.

16 i) Indeed, even after Plaintiff filed another internal complaint on or around August  
17 11, 2022, against the individuals who “celebrated” his demotion (as aforesaid), Defendants  
18 unsurprisingly did not take any action to investigate and remediate Plaintiff’s complaints.

19 j) At least through April 21, 2023, and continuing, Defendants and DOES 1 through  
20 100 failed and/or refused to investigate Plaintiff’s complaints and take appropriate remedial  
21 action.

22 62. In doing the acts alleged herein, Defendants and DOES 1 through 100, and each of them,  
23 were substantially motivated by Plaintiff’s actual/perceived disabilities, need for  
24 accommodations, need for legally protected medical leave, and/or aforesaid legally protected  
25 activities (complaints/protests).

26 63. The acts and conduct of Defendants and DOES 1 through 100, and each of them, as  
27 aforesaid, were in violation of California Government Code §§ 12940 et seq. Said statutes  
28 impose certain duties upon Defendants, and each of them, concerning retaliation against

1 persons, such as Plaintiff, on the basis of disabilities and the prohibition of actual/perceived  
2 disability retaliation. Said statutes were intended to prevent the type of injury and damage  
3 herein set forth.

4 64. By the acts and conduct described above, Defendants and DOES 1 through 100, and each  
5 of them, in violation of said statutes, knew about, or should have known about, and failed to  
6 investigate and/or properly investigate, prevent or remedy the disability retaliation. When  
7 Plaintiff was retaliated against, Plaintiff's actual/perceived disability(s) and/or complaints about  
8 the unlawful conduct were substantial motivating reasons and/or factors in Defendants'  
9 conduct.

10 65. Prior to the initiation of this lawsuit, Plaintiff filed a timely complaint against each named  
11 Defendant with the Civil Rights Department (f/k/a DFEH) pursuant to Cal. Government Code §  
12 12900 et seq. and has received Right-to-Sue notices in a California Superior Court pursuant to  
13 California Government Code § 12965(b). Attached hereto and incorporated herein as Exhibit "A"  
14 are said Complaints and by reference hereto are made a part hereof. Attached hereto and  
15 incorporated herein as Exhibit "B" are said Right-to-Sue notices and by reference hereto are made  
16 a part hereof. Plaintiff also filed a timely tort claim against each named Defendant with the  
17 Government Claims Program pursuant to Cal. Government Code §§ 900 et seq. and has received  
18 a Tort Claim Rejection pursuant to Cal. Government Code § 945.4. Attached hereto and  
19 incorporated herein as Exhibit "C" is said Rejection and by reference hereto are made a part  
20 hereof. Plaintiff has therefore exhausted Plaintiff's administrative remedies under the California  
21 Government Code.

22 66. As a direct and legal result of the acts and omissions of Defendants and DOES 1 through  
23 100, Plaintiff was rendered sick, sore, lame, disabled and/or disordered, both internally and/or  
24 externally, and/or suffered, among other things, numerous internal injuries, severe fright, shock,  
25 pain, discomfort and/or anxiety.

26 67. As a direct and legal result of the acts and omissions of Defendants and DOES 1 through  
27 100, Plaintiff was rendered sick, sore, lame, disabled and/or disordered, both internally and/or  
28 externally, and/or suffered, among other things, numerous internal injuries, severe fright, shock,

1 pain, discomfort and/or anxiety.

2 68. As a further legal result of the acts and omissions of Defendants and DOES 1 through  
3 100, Plaintiff has been forced and/or may be forced to incur expenses for medical care, X-rays,  
4 and/or laboratory costs during the period of Plaintiff's disability, and/or is informed and  
5 believes, and thereon alleges, that Plaintiff may in the future be forced to incur additional  
6 expenses of the same nature, all in an amount which is at present unknown. Plaintiff will pray  
7 leave of court to show the exact amount of said expenses at the time of trial.

8 69. Prior to the occurrence of the incidents, Plaintiff was an able-bodied individual, but since  
9 said incidents may have been unable to engage fully and/or partially in Plaintiff's occupation,  
10 and is informed and believes, and thereon alleges, that Plaintiff may be fully and/or partially  
11 incapacitated and/or unable to perform Plaintiff's usual work for an indefinite period of time in  
12 the future, all to Plaintiff's damage in an amount which is at present unascertained. Plaintiff will  
13 pray leave of court to show the total amount of loss of earnings at the time of trial.

14 70. As a further direct and legal result of the acts and conduct of Defendants and DOES 1  
15 through 100, Plaintiff has been caused, and did suffer, and continues to suffer severe and  
16 permanent emotional and/or mental distress and/or anguish, humiliation, embarrassment, fright,  
17 shock, pain, discomfort and/or anxiety. The exact nature and extent of said injuries is presently  
18 unknown to Plaintiff, who will pray leave of court to assert the same when they are ascertained.

19 71. The aforementioned acts of Defendants and DOES 1 through 100, and each of them, were  
20 willful, wanton, malicious, intentional, oppressive and/or despicable and were done in willful  
21 and conscious disregard of the rights, welfare and safety of Plaintiff, and were done by  
22 managerial agents and employees of Defendant State Department and DOES 1 through 100, and  
23 with the express knowledge, consent, and/or ratification of managerial agents and employees of  
24 Defendant State Department and DOES 1 through 100, thereby justifying the awarding of  
25 punitive and exemplary damages in an amount to be determined at the time of trial pursuant to  
26 California Civil Code § 3294(a) and (b).

27 72. By the aforesaid acts and conduct of Defendants and DOES 1 through 100, Plaintiff has  
28 been directly and legally caused to suffer actual damages pursuant to California Civil Code §

1 3333 including, but not limited to, loss of earnings and future earning capacity, medical and  
2 related expenses for care and procedures both now and in the future, attorneys' fees, and other  
3 pecuniary loss not presently ascertained, for which Plaintiff will seek leave of court to amend  
4 when ascertained.

5 73. As a result of the retaliatory acts of Defendants and DOES 1 through 100, as alleged  
6 herein, Plaintiff is entitled to reasonable attorneys' fees and costs of said suit as specifically  
7 provided in California Government Code § 12965(b).

8 74. The FEHA also provides remedies, including but not limited to, declaratory and  
9 injunctive relief. As such, Plaintiff is entitled to both declaratory and injunctive relief as a result  
10 of Defendants' unlawful conduct.

11 75. Plaintiff has been damaged in an amount within the jurisdictional limits of this Court.

12 **IV.**

13 **FOURTH CAUSE OF ACTION**

14 **For Failure to Engage in the Interactive Process**

15 **[California Government Code §§ 12940 et seq.]**

16 **Against Defendant State Department and Does 1 through 100, Inclusive**

17 76. Plaintiff incorporates herein by reference and re-alleges each and every paragraph in this  
18 Complaint as though duly set forth in full herein.

19 77. At all times relevant herein, Plaintiff was an actual, perceived, and/or potentially disabled  
20 person within the meaning of California Government Code §§ 12926.1(b) et seq., because he was  
21 a person with an actual, perceived, potentially disabling, and/or potentially disabling in the future  
22 physical/mental disability(s) including, but not limited to: stress, anxiety, depression, post-  
23 traumatic stress disorder, and melanoma.

24 78. At all times relevant herein, Plaintiff's impairments affected and/or affect Plaintiff's  
25 mental and psychological condition and/or Plaintiff's brain and related nervous system, thereby  
26 affecting Plaintiff's ability to perform major life activities, such as working.

1 79. At all times relevant herein, Defendant State Department failed to engage in a good-faith  
2 interactive process with Plaintiff to determine whether it would be possible to provide  
3 reasonable accommodations as required by Cal. Gov. Code § 12940(n).

4 80. California Gov. Code § 12940(n) generally provides that it is an unlawful employment  
5 practice for an employer or other entity covered by the FEHA to fail to engage in a timely,  
6 good-faith, interactive process with the employee to determine effective reasonable  
7 accommodations, if any, for an employee with a known physical or mental disability or known  
8 medical condition.

9 81. Defendant State Department was an “employer” pursuant to Cal. Gov. Code §§ 12900 et  
10 seq. and therefore a covered entity.

11 82. At all times relevant herein, Plaintiff was an employee of Defendant State Department.

12 83. At all times relevant herein, Plaintiff had physical and/or mental limitations resulting  
13 from Plaintiff’s aforesaid disabilities, which were known to Defendant State Department, as  
14 aforesaid.

15 84. Defendant State Department and DOES 1 through 100 failed to engage in the mandatory  
16 good-faith interactive process with Plaintiff through the following, among others:

17 a) In or around April 2003, Plaintiff began working for Defendant State Department  
18 in a permanent position as a Firefighter II. Beginning in or around 2010, and continuing  
19 thereafter, Defendant Tim Main openly demeaned Plaintiff behind his back, including by  
20 referring to Plaintiff as an “idiot,” and by telling other employees, “[Plaintiff] doesn’t know  
21 what he’s talking about.” This occurred whenever Defendant State Department’s  
22 employees, including Defendant Main and Plaintiff, worked with the South Santa Clara  
23 County Fire District to respond to fires. These incidents have been independently  
24 corroborated.

25 b) Although Defendant Main did not become Plaintiff’s direct supervisor until around  
26 November 2020, Defendant Main supervised Plaintiff for the majority of the time that they  
27 worked together with the South Santa Clara County Fire District. Plaintiff was promoted  
28

1 to Fire Captain of the Morgan Hill Fire Station in August 2011, and Defendant Main was  
2 promoted to Battalion Chief in 2012.

3 c) In or around July 2012, Plaintiff transferred from the Command Center to  
4 Defendant State Department's fire station where Plaintiff was supervised by then-Battalion  
5 Chief Daryl Wolf. Shortly before Plaintiff's transfer, and continuing thereafter behind  
6 Plaintiff's back, then-Battalion Chief Daryl Wolf and Fire Captain Paul Dellanini openly  
7 referred to Plaintiff as an "idiot," and made fun of Plaintiff for having a "mental  
8 breakdown" and taking stress leave. These incidents directly evidence discriminatory  
9 animus against individuals with actual/perceived mental disabilities and have been  
10 independently corroborated.

11 d) Beginning in or around January 2017, and continuing throughout 2018, Plaintiff  
12 suffered from disabling conditions, including but not limited to stress, anxiety, depression,  
13 and PTSD. Therefore, in 2018, Plaintiff attended a mental health retreat for approximately  
14 seven days.

15 e) Later, in or around October 2020, Plaintiff began working as a part-time Logistics  
16 Officer for the Santa Clara Unit's Service Center. Plaintiff subsequently undertook the  
17 Logistics Officer position on a full-time basis, in addition to his position as Fire Captain.  
18 As a Logistics Officer, Plaintiff routinely used a state credit card to purchase firefighter  
19 gear and supplies worth approximately \$100,000. Plaintiff was also required to complete  
20 paperwork when purchasing, distributing, or discarding firefighter gear.

21 f) Around November 2020, Battalion Chief Defendant Main transferred to the Santa  
22 Clara Unit and became Plaintiff's direct supervisor. Thereafter, and continuing until around  
23 April 14, 2021, Plaintiff repeatedly complained and protested to Defendant Main about  
24 safety violations and state accounting issues. For example, Plaintiff constantly protested  
25 Defendant Main's directives to purchase items with the state credit card outside of the  
26 normal purchasing process, as such purchases were impossible to track and account for.  
27 Defendant Main would also direct firefighters to obtain gear from the Service Center  
28

1 without completing the necessary paperwork. As such, Plaintiff complained to Defendants  
2 that Defendant Main's directives made firefighter gear more susceptible to stealing.

3 g) In response to Plaintiff's complaints and protests, Defendant Main repeatedly  
4 subjected Plaintiff to threatening and/or demeaning conduct, including by telling Plaintiff,  
5 "You will do it my way or get the fuck out." Indeed, Defendant Main's harassment against  
6 Plaintiff only worsened over time. For example, Defendant Main told other employees that  
7 he was "going after" Plaintiff and that they should "stay away" from Plaintiff. Defendant  
8 Main also started yelling at Plaintiff whenever he addressed Plaintiff in a  
9 demeaning/threatening manner, including by yelling, "Get your fucking ass to my office  
10 now!"

11 h) Subsequently, after Plaintiff directed his complaints about safety violations and  
12 state accounting issues to Chief Marcucci, Defendant Main started telling other employees  
13 that he was "coming to get [Plaintiff's] job," and stating, "we're going to hang him  
14 (Plaintiff)."

15 i) Shortly thereafter, on or around April 15, 2021, Defendants removed Plaintiff from  
16 the Logistics Officer position. Defendant Main then began accusing Plaintiff of being a  
17 "liar" whenever Plaintiff answered any of Defendant Main's questions.

18 j) Moreover, Defendant Main made several comments directly evidencing his  
19 discriminatory animus against individuals with actual/perceived mental disabilities, such  
20 as Plaintiff. In one instance, Defendant Main met with Plaintiff and another employee after  
21 he learned that the employee had attended the same mental health retreat as Plaintiff.  
22 Defendant Main then told the employee, "We are firemen. You burned a lot of bridges by  
23 taking that time off. You need to make it right with all of your co-workers."

24 k) Beginning in or around April 2021, and continuing thereafter, Plaintiff sought  
25 reasonable accommodations, including by submitting multiple transfer requests in order to  
26 avoid Defendant Main's aforementioned harassment. Defendant State Department also had  
27 notice of Plaintiff's need for such accommodations based on Plaintiff's internal complaints  
28

1 against Defendant Main. Yet, Defendant State Department denied each of Plaintiff's  
2 requests and failed to engage in the mandatory good-faith interactive process.

3 l) For example, on or around October 16, 2021, Plaintiff requested to be transferred  
4 to a different unit and filed an internal complaint against Defendant Main, which stated the  
5 following, among others: "Chief Main has been [subjecting me to a] hostile work  
6 environment, retaliation, hazing, slander, defamation of character, threatening my job,  
7 mental anguish, falsifying that he's a working paramedic. He has been after me since I was  
8 assigned to work in the service center..." However, Defendant State Department denied  
9 Plaintiff's request and did not take any action to investigate or remediate Plaintiff's  
10 complaints about Defendant Main, and thus, failed to engage in the mandatory good-faith  
11 interactive process.

12 m) Indeed, on another occasion, Division Chief Dwight Good denied Plaintiff's  
13 transfer request and responded, "there's nothing we can do about it," in reference to  
14 Plaintiff's complaints regarding Defendant Main's conduct towards Plaintiff.

15 n) Additionally, beginning in or around October 2021, Plaintiff started struggling with  
16 symptoms of melanoma (skin cancer). From November 2021 through January 2022,  
17 Plaintiff took intermittent medical leave from work whenever Plaintiff sought treatment  
18 for melanoma. Throughout this time, and continuing thereafter, Defendant Main continued  
19 aggravating Plaintiff's stress and anxiety, including by addressing Plaintiff in a  
20 threatening/demeaning manner, calling Plaintiff a "liar," and telling other employees to  
21 stay away from Plaintiff (as aforesaid).

22 o) Despite Plaintiff's requests and complaints about Defendant Main, Defendant State  
23 Department still refused to transfer Plaintiff to a different unit and investigate Plaintiff's  
24 internal complaints regarding Defendant Main. As a result, Plaintiff suffered from more  
25 symptoms/exacerbated symptoms of his disabilities, including but not limited to stress,  
26 anxiety, and PTSD. Indeed, Plaintiff's co-workers informed Plaintiff that they were hearing  
27 Plaintiff talk in his sleep.  
28



1 p) Subsequently, in or around May 2022, Plaintiff failed the test that was given to him  
2 by the Employee Support Services department. Therefore, on or around May 24, 2022,  
3 Plaintiff attended another mental health retreat for approximately eight days. Yet, upon  
4 Plaintiff's return, Defendant State Department still refused to transfer Plaintiff, and thus,  
5 failed to engage in the mandatory good-faith interactive process.

6 q) Then, on or around June 17, 2022, Defendant State Department notified Plaintiff  
7 that he was being demoted from Fire Captain to Firefighter II, in part because of Defendant  
8 Main's false accusations of patient abandonment, related to an emergency response that  
9 occurred on July 21, 2021. Specifically, Defendant Main falsely alleged that Engineer Josh  
10 Manley failed to complete appropriate paperwork, and thus, Plaintiff was also at fault for  
11 the purported failure because Engineer Manley was Plaintiff's subordinate. Subsequently,  
12 a Skelly Review Officer determined that Defendant Main's false allegations were  
13 unfounded, and thus, Defendants provided Engineer Manley with back pay and removed  
14 Engineer Manley's suspension from his record. However, Defendant State Department  
15 refused to reinstate Plaintiff back to his position as Fire Captain.

16 r) Defendants also justified Plaintiff's demotion by claiming that Plaintiff subjected  
17 the Department to unnecessary liability when Plaintiff allowed Firefighters to sleep off site  
18 while on duty. Defendant State Department claimed that, by doing so, Plaintiff jeopardized  
19 public safety by potentially delaying response times. Specifically, Defendant State  
20 Department referenced one instance that occurred on July 19, 2021, when Plaintiff  
21 permitted two Firefighters to sleep at a nearby hotel while they were on duty. Yet, since at  
22 least 2011, and continuing thereafter until at least late-2021, it was common practice for  
23 Firefighters to sleep off site while on duty. Battalion Chiefs and Fire Captains even  
24 permitted Firefighters to sleep at home while they were on duty, as long as they would be  
25 able to return to the Morgan Hill Fire Station within one hour after being called to return.  
26 These practices have been independently corroborated.

27 s) Further, Defendant State Department justified Plaintiff's demotion by falsely  
28 accusing Plaintiff of providing dishonest statements during the Department's

1 administrative investigations into the aforementioned incidents. Yet, these false  
2 accusations were partially based on statements that were provided by some of the  
3 individuals who subsequently celebrated Plaintiff's demotion with an ice cream and cake  
4 party (described below).

5 t) Egregiously, on or around June 24, 2022, Defendant Main held an ice cream and  
6 cake party at the Morgan Hill Fire Station to celebrate Plaintiff's demotion. During the  
7 party, which was attended by the station's employees and Fire Captains from other fire  
8 stations, Defendant Main boldly admitted that he was "singling out" Plaintiff and "trying  
9 to get him fired." Shortly thereafter, Defendant Main shared a picture of the party in a text  
10 message thread with Fire Captains and Engineers. In the text message thread, Fire Captain  
11 Gil Rodriguez stated, "I don't eat sweets but dang that was the best cake ever," to which  
12 Defendant Main responded, "Yes it was." Fire Captain Herb Alpers, who worked with Fire  
13 Captain Rodriguez at another fire station, then responded, "Aww man I woulda came down  
14 for that!!!! FUCK YEAH," to which Engineer Anthony Rhoades responded, "It's a fucking  
15 party. You guys are too funny." Subsequently, Plaintiff's co-worker conveyed information  
16 about Defendants' celebrations to Plaintiff because his co-worker felt uncomfortable about  
17 participating.

18 u) Therefore, on or around August 11, 2022, Plaintiff filed an internal complaint  
19 against the individuals who "celebrated" his demotion, including Defendant Main, Fire  
20 Captain Ryan Connolly, Fire Captain Gil Rodriguez, and Mechanic Kevin Murray.  
21 Plaintiff again complained of stress and mental anguish, yet unsurprisingly, Defendants did  
22 not take any action to investigate and remediate Plaintiff's complaints.

23 v) At least through April 21, 2023, and continuing, Defendants and DOES 1 through  
24 100 failed and/or refused to investigate Plaintiff's complaints and take appropriate remedial  
25 action.

26 85. At all times relevant herein, Plaintiff was willing to participate in an interactive process  
27 to determine whether reasonable accommodations could be made.  
28

1 86. At all times relevant herein, Plaintiff had disabilities, which were known to Defendant  
2 State Department and DOES 1-100. Pursuant to Cal. Code of Regulations § 11069(b)(2), an  
3 employer or other covered entity shall initiate an interactive process when the employer or other  
4 covered entity otherwise becomes aware of the need for an accommodation through a third  
5 party or by observation.

6 87. At all times relevant herein, Defendant State Department was aware and/or had notice of  
7 Plaintiff's injuries and/or disabilities (including, but not limited to stress, anxiety, depression,  
8 post-traumatic stress disorder, and melanoma) and/or need for accommodations pursuant to Cal.  
9 Code of Regulations § 11069(b)(2).

10 88. Plaintiff was harmed as a result of Defendant State Department and DOES 1-100's  
11 failure to engage in the mandatory good-faith interactive process.

12 89. Defendant State Department and DOES 1-100's failure to engage in the mandatory good-  
13 faith interactive process was a substantial factor in causing Plaintiff's harm.

14 90. Prior to the initiation of this lawsuit, Plaintiff filed a timely complaint against each named  
15 Defendant with the Civil Rights Department (f/k/a DFEH) pursuant to Cal. Government Code §  
16 12900 et seq. and has received Right-to-Sue notices in a California Superior Court pursuant to  
17 California Government Code § 12965(b). Attached hereto and incorporated herein as Exhibit "A"  
18 are said Complaints and by reference hereto are made a part hereof. Attached hereto and  
19 incorporated herein as Exhibit "B" are said Right-to-Sue notices and by reference hereto are made  
20 a part hereof. Plaintiff also filed a timely tort claim against each named Defendant with the  
21 Government Claims Program pursuant to Cal. Government Code §§ 900 et seq. and has received  
22 a Tort Claim Rejection pursuant to Cal. Government Code § 945.4. Attached hereto and  
23 incorporated herein as Exhibit "C" is said Rejection and by reference hereto are made a part  
24 hereof. Plaintiff has therefore exhausted Plaintiff's administrative remedies under the California  
25 Government Code.

26 91. Prior to the occurrence of the incidents, Plaintiff was an able-bodied individual, but since  
27 said incidents may have been unable to engage fully and/or partially in Plaintiff's occupation, and  
28 is informed and believes, and thereon alleges, that Plaintiff may be fully and/or partially

1 incapacitated and/or unable to perform Plaintiff's usual work for an indefinite period of time in  
2 the future, all to Plaintiff's damage in an amount which is at present unascertained. Plaintiff will  
3 pray leave of court to show the total amount of loss of earnings at the time of trial.

4 92. As a further legal result of the acts and omissions of Defendant State Department and  
5 DOES 1 through 100, Plaintiff may have been forced and/or will be forced to incur expenses for  
6 medical care, X-rays, and/or laboratory costs during the period of Plaintiff's disabilities, and is  
7 informed and believes, and thereon alleges, that he may in the future be forced to incur additional  
8 expenses of the same nature, all in an amount which is at present unknown. Plaintiff will pray  
9 leave of court to show the exact amount of said expenses at the time of trial.

10 93. As a further direct and legal result of the conduct of Defendant State Department and DOES  
11 1 through 100, Plaintiff has been caused, and did suffer, and continues to suffer severe and  
12 permanent emotional and mental distress and anguish, humiliation, embarrassment, fright, shock,  
13 pain, discomfort and/or anxiety. The exact nature and extent of said injuries is presently unknown  
14 to Plaintiff, who will pray leave of court to assert the same when they are ascertained.

15 94. The aforementioned acts of Defendant State Department and DOES 1 through 100, and  
16 each of them, were willful, wanton, malicious, intentional, oppressive and despicable and were  
17 done in willful and conscious disregard of the rights, welfare and safety of Plaintiff, thereby  
18 justifying the awarding of punitive and exemplary damages against Defendant State Department  
19 in an amount to be determined at the time of trial pursuant to Cal. Civil Code § 3294(a) and (b).

20 95. By the aforesaid acts and conduct of Defendant State Department and DOES 1 through  
21 100, Plaintiff has been directly and legally caused to suffer actual damages pursuant to California  
22 Civil Code § 3333 including, but not limited to, loss of earnings and future earning capacity,  
23 medical and related expenses for care and procedures both now and in the future, attorney's fees,  
24 and other pecuniary loss not presently ascertained, for which Plaintiff will seek leave of court to  
25 amend when ascertained.

26 96. As a result of Defendant State Department and DOES 1 through 100's failure to initiate  
27 and participate in the good-faith interactive process, as alleged herein, Plaintiff is entitled to  
28

1 reasonable attorney's fees and costs of said suit as specifically provided in California Government  
2 Code § 12965(b).

3 97. FEHA also provides remedies, including but not limited to, declaratory and injunctive  
4 relief. As such, Plaintiff is entitled to both declaratory and injunctive relief as a result of  
5 Defendants' unlawful conduct.

6 98. Plaintiff has been damaged in an amount within the jurisdictional limits of this Court.

7 **V.**

8 **FIFTH CAUSE OF ACTION**

9 **For Failure to Accommodate**

10 **[California Government Code §§ 12940 et seq.]**

11 **Against Defendant State Department and Does 1 through 100, Inclusive**

12 99. Plaintiff incorporates herein by reference and re-alleges each and every paragraph in this  
13 Complaint as though duly set forth in full herein.

14 100. Throughout Plaintiff's employment, Defendant State Department failed to reasonably  
15 accommodate Plaintiff's disabilities as required by Cal. Gov. Code § 12940(m).

16 101. Cal. Gov. Code § 12940(m) provides that it is an unlawful employment practice for an  
17 employer or other entity covered by this part to fail to make reasonable accommodations for the  
18 known physical or mental disabilities of an applicant or employee.

19 102. At all times relevant herein, Plaintiff was an actual, perceived, and/or potentially disabled  
20 person within the meaning of California Government Code §§ 12926.1(b) et seq., because he was  
21 a person with an actual, perceived, potentially disabling, and/or potentially disabling in the future  
22 physical/mental disability(s) including, but not limited to: stress, anxiety, depression, post-  
23 traumatic stress disorder, and melanoma.

24 103. At all times relevant herein, Defendant State Department and DOES 1-100 failed to provide  
25 reasonable accommodations and/or retaliated and discriminated against Plaintiff due to his  
26 request/need for accommodations. Plaintiff's request for accommodations, which Defendants  
27 failed to provide, included but were not limited to Plaintiff's requests to be transferred to a  
28 different unit, due to the following, among others:

1 a) In or around April 2003, Plaintiff began working for Defendant State Department  
2 in a permanent position as a Firefighter II. Beginning in or around 2010, and continuing  
3 thereafter, Defendant Tim Main openly demeaned Plaintiff behind his back, including by  
4 referring to Plaintiff as an “idiot,” and by telling other employees, “[Plaintiff] doesn’t know  
5 what he’s talking about.” This occurred whenever Defendant State Department’s  
6 employees, including Defendant Main and Plaintiff, worked with the South Santa Clara  
7 County Fire District to respond to fires. These incidents have been independently  
8 corroborated.

9 b) Although Defendant Main did not become Plaintiff’s direct supervisor until around  
10 November 2020, Defendant Main supervised Plaintiff for the majority of the time that they  
11 worked together with the South Santa Clara County Fire District. Plaintiff was promoted  
12 to Fire Captain of the Morgan Hill Fire Station in August 2011, and Defendant Main was  
13 promoted to Battalion Chief in 2012.

14 c) In or around July 2012, Plaintiff transferred from the Command Center to  
15 Defendant State Department’s fire station where Plaintiff was supervised by then-Battalion  
16 Chief Daryl Wolf. Shortly before Plaintiff’s transfer, and continuing thereafter behind  
17 Plaintiff’s back, then-Battalion Chief Daryl Wolf and Fire Captain Paul Dellanini openly  
18 referred to Plaintiff as an “idiot,” and made fun of Plaintiff for having a “mental  
19 breakdown” and taking stress leave. These incidents directly evidence discriminatory  
20 animus against individuals with actual/perceived mental disabilities and have been  
21 independently corroborated.

22 d) Beginning in or around January 2017, and continuing throughout 2018, Plaintiff  
23 suffered from disabling conditions, including but not limited to stress, anxiety, depression,  
24 and PTSD. Therefore, in 2018, Plaintiff attended a mental health retreat for approximately  
25 seven days.

26 e) Later, in or around October 2020, Plaintiff began working as a part-time Logistics  
27 Officer for the Santa Clara Unit’s Service Center. Plaintiff subsequently undertook the  
28 Logistics Officer position on a full-time basis, in addition to his position as Fire Captain.

1 As a Logistics Officer, Plaintiff routinely used a state credit card to purchase firefighter  
2 gear and supplies worth approximately \$100,000. Plaintiff was also required to complete  
3 paperwork when purchasing, distributing, or discarding firefighter gear.

4 f) Around November 2020, Battalion Chief Defendant Main transferred to the Santa  
5 Clara Unit and became Plaintiff's direct supervisor. Thereafter, and continuing until around  
6 April 14, 2021, Plaintiff repeatedly complained and protested to Defendant Main about  
7 safety violations and state accounting issues. For example, Plaintiff constantly protested  
8 Defendant Main's directives to purchase items with the state credit card outside of the  
9 normal purchasing process, as such purchases were impossible to track and account for.  
10 Defendant Main would also direct firefighters to obtain gear from the Service Center  
11 without completing the necessary paperwork. As such, Plaintiff complained to Defendants  
12 that Defendant Main's directives made firefighter gear more susceptible to stealing.

13 g) In response to Plaintiff's complaints and protests, Defendant Main repeatedly  
14 subjected Plaintiff to threatening and/or demeaning conduct, including by telling Plaintiff,  
15 "You will do it my way or get the fuck out." Indeed, Defendant Main's harassment against  
16 Plaintiff only worsened over time. For example, Defendant Main told other employees that  
17 he was "going after" Plaintiff and that they should "stay away" from Plaintiff. Defendant  
18 Main also started yelling at Plaintiff whenever he addressed Plaintiff in a  
19 demeaning/threatening manner, including by yelling, "Get your fucking ass to my office  
20 now!"

21 h) Subsequently, after Plaintiff directed his complaints about safety violations and  
22 state accounting issues to Chief Marcucci, Defendant Main started telling other employees  
23 that he was "coming to get [Plaintiff's] job," and stating, "we're going to hang him  
24 (Plaintiff)."

25 i) Shortly thereafter, on or around April 15, 2021, Defendants removed Plaintiff from  
26 the Logistics Officer position. Defendant Main then began accusing Plaintiff of being a  
27 "liar" whenever Plaintiff answered any of Defendant Main's questions.  
28

1 j) Moreover, Defendant Main made several comments directly evidencing his  
2 discriminatory animus against individuals with actual/perceived mental disabilities, such  
3 as Plaintiff. In one instance, Defendant Main met with Plaintiff and another employee after  
4 he learned that the employee had attended the same mental health retreat as Plaintiff.  
5 Defendant Main then told the employee, “We are firemen. You burned a lot of bridges by  
6 taking that time off. You need to make it right with all of your co-workers.”

7 k) Beginning in or around April 2021, and continuing thereafter, Plaintiff sought  
8 reasonable accommodations, including by submitting multiple transfer requests in order to  
9 avoid Defendant Main’s aforementioned harassment. Defendant State Department also had  
10 notice of Plaintiff’s need for such accommodations based on Plaintiff’s internal complaints  
11 against Defendant Main. Yet, Defendant State Department denied each of Plaintiff’s  
12 requests and failed to provide Plaintiff with reasonable accommodations.

13 l) For example, on or around October 16, 2021, Plaintiff requested to be transferred  
14 to a different unit and filed an internal complaint against Defendant Main, which stated the  
15 following, among others: “Chief Main has been [subjecting me to a] hostile work  
16 environment, retaliation, hazing, slander, defamation of character, threatening my job,  
17 mental anguish, falsifying that he’s a working paramedic. He has been after me since I was  
18 assigned to work in the service center...” However, Defendant State Department denied  
19 Plaintiff’s request and did not take any action to investigate or remediate Plaintiff’s  
20 complaints about Defendant Main, and thus, failed to provide Plaintiff with reasonable  
21 accommodations.

22 m) Indeed, on another occasion, Division Chief Dwight Good denied Plaintiff’s  
23 transfer request and responded, “there’s nothing we can do about it,” in reference to  
24 Plaintiff’s complaints regarding Defendant Main’s conduct towards Plaintiff.

25 n) Additionally, beginning in or around October 2021, Plaintiff started struggling with  
26 symptoms of melanoma (skin cancer). From November 2021 through January 2022,  
27 Plaintiff took intermittent medical leave from work whenever Plaintiff sought treatment  
28 for melanoma. Throughout this time, and continuing thereafter, Defendant Main continued



1           aggravating Plaintiff's stress and anxiety, including by addressing Plaintiff in a  
2           threatening/demeaning manner, calling Plaintiff a "liar," and telling other employees to  
3           stay away from Plaintiff (as aforesaid).

4           o)       Despite Plaintiff's requests and complaints about Defendant Main, Defendant State  
5           Department still refused to transfer Plaintiff to a different unit and investigate Plaintiff's  
6           internal complaints regarding Defendant Main. As a result, Plaintiff suffered from more  
7           symptoms/exacerbated symptoms of his disabilities, including but not limited to stress,  
8           anxiety, and PTSD. Indeed, Plaintiff's co-workers informed Plaintiff that they were hearing  
9           Plaintiff talk in his sleep.

10          p)       Subsequently, in or around May 2022, Plaintiff failed the test that was given to him  
11          by the Employee Support Services department. Therefore, on or around May 24, 2022,  
12          Plaintiff attended another mental health retreat for approximately eight days. Yet, upon  
13          Plaintiff's return, Defendant State Department still refused to transfer Plaintiff, and thus,  
14          failed to provide Plaintiff with reasonable accommodations.

15          q)       Then, on or around June 17, 2022, Defendant State Department notified Plaintiff  
16          that he was being demoted from Fire Captain to Firefighter II, in part because of Defendant  
17          Main's false accusations of patient abandonment, related to an emergency response that  
18          occurred on July 21, 2021. Specifically, Defendant Main falsely alleged that Engineer Josh  
19          Manley failed to complete appropriate paperwork, and thus, Plaintiff was also at fault for  
20          the purported failure because Engineer Manley was Plaintiff's subordinate. Subsequently,  
21          a Skelly Review Officer determined that Defendant Main's false allegations were  
22          unfounded, and thus, Defendants provided Engineer Manley with back pay and removed  
23          Engineer Manley's suspension from his record. However, Defendant State Department  
24          refused to reinstate Plaintiff back to his position as Fire Captain.

25          r)       Defendants also justified Plaintiff's demotion by claiming that Plaintiff subjected  
26          the Department to unnecessary liability when Plaintiff allowed Firefighters to sleep off site  
27          while on duty. Defendant State Department claimed that, by doing so, Plaintiff jeopardized  
28          public safety by potentially delaying response times. Specifically, Defendant State

1 Department referenced one instance that occurred on July 19, 2021, when Plaintiff  
2 permitted two Firefighters to sleep at a nearby hotel while they were on duty. Yet, since at  
3 least 2011, and continuing thereafter until at least late-2021, it was common practice for  
4 Firefighters to sleep off site while on duty. Battalion Chiefs and Fire Captains even  
5 permitted Firefighters to sleep at home while they were on duty, as long as they would be  
6 able to return to the Morgan Hill Fire Station within one hour after being called to return.  
7 These practices have been independently corroborated.

8 s) Further, Defendant State Department justified Plaintiff's demotion by falsely  
9 accusing Plaintiff of providing dishonest statements during the Department's  
10 administrative investigations into the aforementioned incidents. Yet, these false  
11 accusations were partially based on statements that were provided by some of the  
12 individuals who subsequently celebrated Plaintiff's demotion with an ice cream and cake  
13 party (described below).

14 t) Egregiously, on or around June 24, 2022, Defendant Main held an ice cream and  
15 cake party at the Morgan Hill Fire Station to celebrate Plaintiff's demotion. During the  
16 party, which was attended by the station's employees and Fire Captains from other fire  
17 stations, Defendant Main boldly admitted that he was "singling out" Plaintiff and "trying  
18 to get him fired." Shortly thereafter, Defendant Main shared a picture of the party in a text  
19 message thread with Fire Captains and Engineers. In the text message thread, Fire Captain  
20 Gil Rodriguez stated, "I don't eat sweets but dang that was the best cake ever," to which  
21 Defendant Main responded, "Yes it was." Fire Captain Herb Alpers, who worked with Fire  
22 Captain Rodriguez at another fire station, then responded, "Aww man I woulda came down  
23 for that!!!! FUCK YEAH," to which Engineer Anthony Rhoades responded, "It's a fucking  
24 party. You guys are too funny." Subsequently, Plaintiff's co-worker conveyed information  
25 about Defendants' celebrations to Plaintiff because his co-worker felt uncomfortable about  
26 participating.

27 u) Therefore, on or around August 11, 2022, Plaintiff filed an internal complaint  
28 against the individuals who "celebrated" his demotion, including Defendant Main, Fire

1 Captain Ryan Connolly, Fire Captain Gil Rodriguez, and Mechanic Kevin Murray.  
2 Plaintiff again complained of stress and mental anguish, yet unsurprisingly, Defendants did  
3 not take any action to investigate and remediate Plaintiff's complaints.

4 v) At least through April 21, 2023, and continuing, Defendants and DOES 1 through  
5 100 failed and/or refused to investigate Plaintiff's complaints and take appropriate remedial  
6 action.

7 104. Accordingly, Defendant State Department had and maintained a policy and/or practice  
8 which prevented/prevents Plaintiff and other employees from complaining about and/or  
9 protesting his/her employer's violation(s) of law to a government agency, or reasonable belief  
10 that a law(s) is being violated.

11 105. California Labor Code § 1102.5 declares:

12 (a) An employer, or any person acting on behalf of the employer, shall not make,  
13 adopt, or enforce any rule, regulation, or policy preventing an employee from  
14 disclosing information to a government or law enforcement agency, to a person  
15 with authority over the employee, or to another employee who has authority to  
16 investigate, discover, or correct the violation or noncompliance, or from providing  
17 information to, or testifying before, any public body conducting an investigation,  
18 hearing, or inquiry, if the employee has reasonable cause to believe that the  
19 information discloses a violation of state or federal statute, or a violation of or  
20 noncompliance with a local, state, or federal rule or regulation, regardless of  
21 whether disclosing the information is part of the employee's job duties.

22 (b) An employer, or any person acting on behalf of the employer, shall not retaliate  
23 against an employee for disclosing information, or because the employer believes  
24 that the employee disclosed or may disclose information, to a government or law  
25 enforcement agency, to a person with authority over the employee or another  
26 employee who has the authority to investigate, discover, or correct the violation or  
27 noncompliance, or for providing information to, or testifying before, any public  
28 body conducting an investigation, hearing, or inquiry, if the employee has

1 reasonable cause to believe that the information discloses a violation of state or  
2 federal statute, or a violation of or noncompliance with a local, state, or federal rule  
3 or regulation, regardless of whether disclosing the information is part of the  
4 employee's job duties.

5 (c) An employer, or any person acting on behalf of the employer, shall not retaliate  
6 against an employee for refusing to participate in an activity that would result in a  
7 violation of state or federal statute, or a violation of or noncompliance with a local,  
8 state, or federal rule or regulation.

9 106. Defendant State Department violated Cal. Labor Code § 1102.5(a) as it made, adopted, and  
10 enforced rules, regulation and policies preventing Plaintiff from disclosing information to  
11 government and law enforcement agencies or a person with authority over Plaintiff and/or  
12 authority to investigate, discover, investigate, or correct the violation, where Plaintiff had  
13 reasonable cause to believe Plaintiff's employer was violating the law.

14 107. Defendant State Department violated Cal. Labor Code § 1102.5(b) as it retaliated against  
15 Plaintiff for protesting Defendants' unlawful actions, and/or because Defendants felt Plaintiff  
16 may protest, to a government or law enforcement agency or to a person with authority over the  
17 employee and/or authority to investigate, discover, investigate, or correct the violation.

18 108. Plaintiff was retaliated against through the aforesaid acts by Defendants, at least in part,  
19 because of Plaintiff's complaints/reports regarding Defendants' actual/perceived disability  
20 harassment and discrimination; Defendants practices which caused discrepancies in Defendants'  
21 use of State funds; and workplace safety violations. Defendant State Department was thus in  
22 violation of Cal. Labor Code § 1102.5(c).

23 109. When Plaintiff was subjected to the adverse employment actions identified above,  
24 Defendants, and DOES 1 through 100, and each of them, were substantially motivated by  
25 Plaintiff's complaints of violations of state and/or federal law (or Plaintiff's reasonable belief that  
26 a law(s) was being violated), and said complaints were substantial motivating factors and/or  
27 reasons in the decision to subject Plaintiff to the aforesaid retaliatory, adverse employment  
28 actions, in violation of California Labor Code § 1102.5.

1 110. At all times herein mentioned, the public policy of the State of California, as codified by  
2 California Labor Code § 6300, 6311, 6400 is to prohibit employers from retaliating against their  
3 employees for protesting an unsafe workplace, including violence and threat of violence and  
4 assault, and refusing to perform work in the performance of which would violate any occupational  
5 safety or health standard or any section of the California Labor Code. This public policy of the  
6 State of California is designed to protect all employees and to promote the welfare and well-being  
7 of the community at large. The policy inures to the benefit of the public and is fundamental and  
8 substantial.

9 111. At all times herein mentioned, the public policy of the State of California, as codified by  
10 California Penal Code § 424, is to prohibit the misappropriation of public funds. The policy inures  
11 to the benefit of the public and is fundamental and substantial.

12 112. At all times herein mentioned, the California Occupational Safety and Health Act of 1973  
13 was enacted for the purpose of assuring safe and healthful working conditions for all California  
14 working men and women by authorizing the enforcement of effective standards, assisting and  
15 encouraging employers to maintain safe and healthful working conditions, and by the public  
16 policy of the State of California, as codified by California Labor Code § 6300 et seq. and 6400  
17 et. seq, is to prohibit employers from retaliating against their employees for refusing to perform  
18 work in the performance of which would violate any occupational safety or health standard or  
19 any section of the California Labor Code. This public policy of the State of California is designed  
20 to protect all employees and to promote the welfare and well-being of the community at large.  
21 The policy inures to the benefit of the public and is fundamental and substantial.

22 113. As a direct and legal result of the acts and omissions of Defendants and DOES 1 through  
23 100, and each of them, Plaintiff was rendered sick, sore, lame, disabled and/or disordered, both  
24 internally and/or externally, and suffered, among other things, emotional distress, including but  
25 not limited to shock, pain, discomfort and/or anxiety.

26 114. As a further legal result of the acts and omissions of Defendants, and DOES 1 through 100,  
27 and each of them, Plaintiff has been forced and/or may be forced to incur expenses for medical  
28 care, X-rays, and/or laboratory costs during the period of Plaintiff's disability, and is informed

1 and believes, and/or thereon alleges, that Plaintiff may in the future be forced to incur additional  
2 expenses of the same nature, all in an amount which is at present unknown. Plaintiff will pray  
3 leave of court to show the exact amount of said expenses at the time of trial.

4 115. Prior to the occurrence of the incidents, Plaintiff was an able-bodied individual, but since  
5 said incidents has been or may have been unable to engage fully and/or partially in Plaintiff's  
6 occupation, and is informed and believes, and thereon alleges, that Plaintiff may be fully and/or  
7 partially incapacitated and/or unable to perform Plaintiff's usual work for an indefinite period  
8 of time in the future, all to Plaintiff's damage in an amount which is at present unascertained.  
9 Plaintiff will pray leave of court to show the total amount of loss of earnings at the time of trial.

10 116. As a further direct and legal result of the acts of Defendants, and DOES 1 through 100,  
11 Plaintiff has been caused, and did suffer, and continues to suffer severe and/or permanent  
12 emotional and/or mental distress and anguish, humiliation, embarrassment, fright, shock, pain,  
13 discomfort and/or anxiety. The exact nature and extent of said injuries is presently unknown to  
14 Plaintiff, who will pray leave of court to assert the same when they are ascertained.

15 117. The aforementioned acts of Defendants and DOES 1 through 100, and each of them, were  
16 willful, wanton, malicious, intentional, oppressive and despicable and were done in willful and  
17 conscious disregard of the rights, welfare and safety of Plaintiff, and were done by managerial  
18 agents and employees of Defendants, and with the express knowledge, consent, and ratification  
19 of managerial agents and employees of Defendants and DOES 1 through 100, thereby justifying  
20 the awarding of punitive and exemplary damages in an amount to be determined at the time of  
21 trial pursuant to Cal. Civil Code § 3294(a) and (b).

22 118. Plaintiff is entitled to a civil penalty up to ten thousand dollars (\$10,000) for each violation  
23 of Cal. Lab. Code § 1102.5.

24 119. By the acts and conduct of aforesaid Defendants, and DOES 1 through 100, and each of  
25 them, Plaintiff has been directly and legally caused to suffer actual damages pursuant to  
26 California Civil Code § 3333 including, but not limited to, loss of earnings and future earning  
27 capacity, medical and related expenses for care and procedures both now and in the future,  
28 attorneys' fees, and other pecuniary loss not presently ascertained, for which Plaintiff will seek

1 leave of court to amend when ascertained.

2 120. As a result of the unlawful acts of Defendants and DOES 1 through 100, and each of them,  
3 as alleged herein, Plaintiff is entitled to reasonable attorneys' fees and costs of said suit as  
4 specifically provided in Cal. C.C.P. § 1021.5. Plaintiff's action enforces important rights affecting  
5 the public interest by bringing forth this lawsuit to ensure Defendants refrain from unlawfully  
6 retaliating against employees for blowing the whistle, thereby conferring a significant benefit on  
7 the general public's health and well-being as a result. The necessity and financial burden of this  
8 private enforcement, as well as the interest of justice, entitles Plaintiff to reasonable attorneys'  
9 fees and costs under Cal. C.C.P. § 1021.5.

10 121. Plaintiff has been damaged in an amount within the jurisdictional limits of this Court.

11 **VII.**

12 **SEVENTH CAUSE OF ACTION**

13 **For Intentional Infliction of Emotional Distress**

14 **Against All Defendants and Does 1 through 100, Inclusive**

15 122. Plaintiff incorporates herein by reference and re-alleges each and every paragraph in this  
16 Complaint as though duly set forth in full herein.

17 123. The aforesaid conduct of Defendants, and each of them, was so extreme and outrageous  
18 as to exceed all bounds of that usually tolerated in a civilized society, and intended to cause and  
19 actually did cause Plaintiff to suffer severe emotional distress.

20 124. Defendants, and each of them, intended to cause and did cause Plaintiff severe emotional  
21 distress as a result of Defendants' aforementioned and below described unlawful conduct,  
22 including, among others:

23 a) In or around April 2003, Plaintiff began working for Defendant State Department  
24 in a permanent position as a Firefighter II. Beginning in or around 2010, and continuing  
25 thereafter, Defendant Tim Main openly demeaned Plaintiff behind his back, including by  
26 referring to Plaintiff as an "idiot," and by telling other employees, "[Plaintiff] doesn't know  
27 what he's talking about." This occurred whenever Defendant State Department's  
28 employees, including Defendant Main and Plaintiff, worked with the South Santa Clara

1 County Fire District to respond to fires. These incidents have been independently  
2 corroborated.

3 b) Although Defendant Main did not become Plaintiff's direct supervisor until around  
4 November 2020, Defendant Main supervised Plaintiff for the majority of the time that they  
5 worked together with the South Santa Clara County Fire District. Plaintiff was promoted  
6 to Fire Captain of the Morgan Hill Fire Station in August 2011, and Defendant Main was  
7 promoted to Battalion Chief in 2012.

8 c) In or around July 2012, Plaintiff transferred from the Command Center to  
9 Defendant State Department's fire station where Plaintiff was supervised by then-Battalion  
10 Chief Daryl Wolf. Shortly before Plaintiff's transfer, and continuing thereafter behind  
11 Plaintiff's back, then-Battalion Chief Daryl Wolf and Fire Captain Paul Dellanini openly  
12 referred to Plaintiff as an "idiot," and made fun of Plaintiff for having a "mental  
13 breakdown" and taking stress leave. These incidents directly evidence discriminatory  
14 animus against individuals with actual/perceived mental disabilities and have been  
15 independently corroborated.

16 d) Beginning in or around January 2017, and continuing throughout 2018, Plaintiff  
17 suffered from disabling conditions, including but not limited to stress, anxiety, depression,  
18 and PTSD. Therefore, in 2018, Plaintiff attended a mental health retreat for approximately  
19 seven days.

20 e) Later, in or around October 2020, Plaintiff began working as a part-time Logistics  
21 Officer for the Santa Clara Unit's Service Center. Plaintiff subsequently undertook the  
22 Logistics Officer position on a full-time basis, in addition to his position as Fire Captain.  
23 As a Logistics Officer, Plaintiff routinely used a state credit card to purchase firefighter  
24 gear and supplies worth approximately \$100,000. Plaintiff was also required to complete  
25 paperwork when purchasing, distributing, or discarding firefighter gear.

26 f) Around November 2020, Battalion Chief Defendant Main transferred to the Santa  
27 Clara Unit and became Plaintiff's direct supervisor. Thereafter, and continuing until around  
28 April 14, 2021, Plaintiff repeatedly complained and protested to Defendant Main about



1 safety violations and state accounting issues. For example, Plaintiff constantly protested  
2 Defendant Main's directives to purchase items with the state credit card outside of the  
3 normal purchasing process, as such purchases were impossible to track and account for.  
4 Defendant Main would also direct firefighters to obtain gear from the Service Center  
5 without completing the necessary paperwork. As such, Plaintiff complained to Defendants  
6 that Defendant Main's directives made firefighter gear more susceptible to stealing.

7 g) In response to Plaintiff's complaints and protests, Defendant Main intentionally and  
8 repeatedly subjected Plaintiff to threatening and/or demeaning conduct, including by  
9 telling Plaintiff, "You will do it my way or get the fuck out." Indeed, Defendant Main's  
10 harassment against Plaintiff only worsened over time. For example, Defendant Main told  
11 other employees that he was "going after" Plaintiff and that they should "stay away" from  
12 Plaintiff. Defendant Main also started yelling at Plaintiff whenever he addressed Plaintiff  
13 in a demeaning/threatening manner, including by yelling, "Get your fucking ass to my  
14 office now!"

15 h) Subsequently, after Plaintiff directed his complaints about safety violations and  
16 state accounting issues to Chief Marcucci, Defendant Main started telling other employees  
17 that he was "coming to get [Plaintiff's] job," and stating, "we're going to hang him  
18 (Plaintiff)."

19 i) Shortly thereafter, on or around April 15, 2021, Defendants removed Plaintiff from  
20 the Logistics Officer position. Defendant Main then began accusing Plaintiff of being a  
21 "liar" whenever Plaintiff answered any of Defendant Main's questions.

22 j) Moreover, Defendant Main made several comments directly evidencing his  
23 discriminatory animus against individuals with actual/perceived mental disabilities, such  
24 as Plaintiff. In one instance, Defendant Main met with Plaintiff and another employee after  
25 he learned that the employee had attended the same mental health retreat as Plaintiff.  
26 Defendant Main then told the employee, "We are firemen. You burned a lot of bridges by  
27 taking that time off. You need to make it right with all of your co-workers."  
28

1 k) Beginning in or around April 2021, and continuing thereafter, Plaintiff sought  
2 reasonable accommodations, including by submitting multiple transfer requests in order to  
3 avoid Defendant Main's aforementioned harassment. Defendant State Department also had  
4 notice of Plaintiff's need for such accommodations based on Plaintiff's internal complaints  
5 against Defendant Main. Yet, Defendant State Department denied each of Plaintiff's  
6 requests and intentionally refused to engage in the mandatory good-faith interactive  
7 process.

8 l) For example, on or around October 16, 2021, Plaintiff requested to be transferred  
9 to a different unit and filed an internal complaint against Defendant Main, which stated the  
10 following, among others: "Chief Main has been [subjecting me to a] hostile work  
11 environment, retaliation, hazing, slander, defamation of character, threatening my job,  
12 mental anguish, falsifying that he's a working paramedic. He has been after me since I was  
13 assigned to work in the service center..." However, Defendant State Department denied  
14 Plaintiff's request and did not take any action to investigate or remediate Plaintiff's  
15 complaints about Defendant Main. As such, Defendant State Department intentionally  
16 ratified Defendant Main's unlawful conduct and refused to engage in the mandatory good-  
17 faith interactive process.

18 m) Indeed, on another occasion, Division Chief Dwight Good denied Plaintiff's  
19 transfer request and responded, "there's nothing we can do about it," in reference to  
20 Plaintiff's complaints regarding Defendant Main's conduct towards Plaintiff.

21 n) Additionally, beginning in or around October 2021, Plaintiff started struggling with  
22 symptoms of melanoma (skin cancer). From November 2021 through January 2022,  
23 Plaintiff took intermittent medical leave from work whenever Plaintiff sought treatment  
24 for melanoma. Throughout this time, and continuing thereafter, Defendant Main  
25 intentionally continued to harass Plaintiff and treat him negatively, including by addressing  
26 Plaintiff in a threatening/demeaning manner, calling Plaintiff a "liar," and telling other  
27 employees to stay away from Plaintiff (as aforesaid).

1 o) Despite Plaintiff's requests and complaints about Defendant Main, Defendant State  
2 Department still refused to transfer Plaintiff to a different unit and investigate Plaintiff's  
3 internal complaints regarding Defendant Main. As a result, Plaintiff suffered from more  
4 symptoms/exacerbated symptoms of his disabilities, including but not limited to stress,  
5 anxiety, and PTSD. Indeed, Plaintiff's co-workers informed Plaintiff that they were hearing  
6 Plaintiff talk in his sleep.

7 p) Subsequently, in or around May 2022, Plaintiff failed the test that was given to him  
8 by the Employee Support Services department. Therefore, on or around May 24, 2022,  
9 Plaintiff attended another mental health retreat for approximately eight days. Yet, upon  
10 Plaintiff's return, Defendant State Department still refused to transfer Plaintiff or  
11 adequately investigate and remediate Plaintiff's complaints regarding Defendant Main. As  
12 such, Defendant State Department intentionally ratified Defendant Main's aforementioned  
13 unlawful conduct and refused to engage in the mandatory good-faith interactive process.

14 q) Then, on or around June 17, 2022, Defendant State Department notified Plaintiff  
15 that he was being demoted from Fire Captain to Firefighter II, in part because of Defendant  
16 Main's false accusations of patient abandonment, related to an emergency response that  
17 occurred on July 21, 2021. Specifically, Defendant Main intentionally and falsely alleged  
18 that Engineer Josh Manley failed to complete appropriate paperwork, and thus, Plaintiff  
19 was also at fault for the purported failure because Engineer Manley was Plaintiff's  
20 subordinate. Subsequently, a Skelly Review Officer determined that Defendant Main's  
21 false allegations were unfounded, and thus, Defendants provided Engineer Manley with  
22 back pay and removed Engineer Manley's suspension from his record. However,  
23 Defendant State Department intentionally refused to reinstate Plaintiff back to his position  
24 as Fire Captain.

25 r) Defendants also justified Plaintiff's demotion by claiming that Plaintiff subjected  
26 the Department to unnecessary liability when Plaintiff allowed Firefighters to sleep off site  
27 while on duty. Defendant State Department claimed that, by doing so, Plaintiff jeopardized  
28 public safety by potentially delaying response times. Specifically, Defendant State

1 Department referenced one instance that occurred on July 19, 2021, when Plaintiff  
2 permitted two Firefighters to sleep at a nearby hotel while they were on duty. Yet, since at  
3 least 2011, and continuing thereafter until at least late-2021, it was common practice for  
4 Firefighters to sleep off site while on duty. Battalion Chiefs and Fire Captains even  
5 permitted Firefighters to sleep at home while they were on duty, as long as they would be  
6 able to return to the Morgan Hill Fire Station within one hour after being called to return.  
7 These practices have been independently corroborated.

8 s) Further, Defendant State Department justified Plaintiff's demotion by falsely  
9 accusing Plaintiff of providing dishonest statements during the Department's  
10 administrative investigations into the aforementioned incidents. Yet, these false  
11 accusations were partially based on statements that were provided by some of the  
12 individuals who subsequently celebrated Plaintiff's demotion with an ice cream and cake  
13 party (described below).

14 t) Egregiously, on or around June 24, 2022, Defendant Main held an ice cream and  
15 cake party at the Morgan Hill Fire Station to celebrate Plaintiff's demotion. During the  
16 party, which was attended by the station's employees and Fire Captains from other fire  
17 stations, Defendant Main boldly admitted that he was "singling out" Plaintiff and "trying  
18 to get him fired."

19 u) Shortly thereafter, Defendant Main shared a picture of the party in a text message  
20 thread with Fire Captains and Engineers. In the text message thread, Fire Captain Gil  
21 Rodriguez stated, "I don't eat sweets but dang that was the best cake ever," to which  
22 Defendant Main responded, "Yes it was." Fire Captain Herb Alpers, who worked with Fire  
23 Captain Rodriguez at another fire station, then responded, "Aww man I woulda came down  
24 for that!!!! FUCK YEAH," to which Engineer Anthony Rhoades responded, "It's a fucking  
25 party. You guys are too funny." Subsequently, Plaintiff's co-worker conveyed information  
26 about Defendants' celebrations to Plaintiff because his co-worker felt uncomfortable about  
27 participating.  
28

1 v) Therefore, on or around August 11, 2022, Plaintiff filed an internal complaint  
2 against the individuals who “celebrated” his demotion, including Defendant Main, Fire  
3 Captain Ryan Connolly, Fire Captain Gil Rodriguez, and Mechanic Kevin Murray.  
4 Plaintiff again complained of stress and mental anguish, yet unsurprisingly, Defendants did  
5 not take any action to investigate and remediate Plaintiff’s complaints.

6 w) At least through April 21, 2023, and continuing, Defendants and DOES 1 through  
7 100 failed and/or refused to investigate Plaintiff’s complaints and take appropriate remedial  
8 action.

9 125. Plaintiff did not consent to Defendants’ conduct, as herein alleged, and said conduct was  
10 unprivileged. Defendants’ conduct caused Plaintiff to suffer severe emotional distress.

11 126. At all times relevant herein, Defendant Main was an agent/employee of Defendant State  
12 Department, and in doing the acts alleged herein, Defendant Main was acting within the course  
13 and scope of his employment. As such, Defendant State Department is responsible for  
14 Defendant Mains’ unlawful actions.

15 127. At all times relevant herein, Defendant Main was acting in his individual capacity as well  
16 as within the course and scope of his employment with Defendant State Department. As such,  
17 Defendant Main is also individually responsible for his aforementioned unlawful actions.

18 128. As a direct and legal result of the acts and omissions of Defendants and DOES 1 through  
19 100, and each of them, Plaintiff was rendered sick, sore, lame, disabled and/or disordered, both  
20 internally and externally, and suffered, among other things, numerous internal injuries, severe  
21 fright, shock, pain, discomfort and/or anxiety.

22 129. As a further legal result of the acts and omissions of Defendants and DOES 1 through  
23 100, and each of them, Plaintiff has been forced and/or may be forced to incur expenses for  
24 medical care, X-rays, and/or laboratory costs during the period of Plaintiff’s disability, and is  
25 informed and believes, and thereon alleges, that Plaintiff may in the future be forced to incur  
26 additional expenses of the same nature, all in an amount which is at present unknown. Plaintiff  
27 will pray leave of court to show the exact amount of said expenses at the time of trial.  
28

1 130. Prior to the initiation of this lawsuit, Plaintiff filed a timely tort claim against each named  
2 Defendant with the Government Claims Program pursuant to Cal. Government Code §§ 900 et  
3 seq. and has received a Tort Claim Rejection pursuant to Cal. Government Code § 945.4.  
4 Attached hereto and incorporated herein as Exhibit “C” is said Rejection and by reference hereto  
5 are made a part hereof. Plaintiff has therefore exhausted Plaintiff’s administrative remedies under  
6 the California Government Code.

7 131. Prior to the occurrence of the incidents, Plaintiff was an able-bodied individual, but since  
8 said incidents may have been or has been unable to engage fully in Plaintiff’s occupation, and is  
9 informed and believes, and thereon alleges, that Plaintiff may be fully and/or partially  
10 incapacitated and/or unable to perform Plaintiff’s usual work for an indefinite period of time in  
11 the future, all to Plaintiff’s damage in an amount which is at present unascertained. Plaintiff will  
12 pray leave of court to show the total amount of loss of earnings at the time of trial.

13 132. As a further direct and legal result of the acts and conduct of Defendants and DOES 1  
14 through 100, and each of them, Plaintiff has been caused, and did suffer, and continues to suffer  
15 severe and/or permanent emotional and mental distress and anguish, humiliation,  
16 embarrassment, fright, shock, pain, discomfort and/or anxiety. The exact nature and extent of  
17 said injuries is presently unknown to Plaintiff, who will pray leave of court to assert the same  
18 when they are ascertained.

19 133. The aforementioned acts of Defendants and DOES 1 through 100, and each of them, were  
20 willful, wanton, malicious, intentional, oppressive and despicable and were done in willful and  
21 conscious disregard of the rights, welfare and safety of Plaintiff, and were done by managerial  
22 agents and employees of Defendants and DOES 1 through 100, and with the express knowledge,  
23 consent, and ratification of managerial agents and employees of Defendants and DOES 1  
24 through 100, thereby justifying the awarding of punitive and exemplary damages against  
25 Defendants in an amount to be determined at the time of trial pursuant to California Civil Code §  
26 3294(a) and (b).

27 134. By the aforesaid acts and conduct of Defendants and DOES 1 through 100, and each of  
28 them, Plaintiff has been directly and legally caused to suffer actual damages pursuant to

1 California Civil Code §3333 including, but not limited to, loss of earnings and future earning  
2 capacity, medical and related expenses for care and procedures both now and in the future, and  
3 other pecuniary loss not presently ascertained, for which Plaintiff will seek leave of court to  
4 amend when ascertained.

5 135. As a result of the discriminatory acts of Defendants and DOES 1 through 100, and each  
6 of them, as alleged herein, Plaintiff is entitled to reasonable attorneys' fees and costs of said suit  
7 as specifically provided in California Code of Civil Procedure § 1021.5. Plaintiff's action  
8 enforces important rights affecting the public interest by bringing forth this lawsuit to ensure  
9 that Defendant State Department, as an employer, refrains from intentionally inflicting  
10 emotional distress onto an employee, thereby conferring a significant benefit on the general  
11 public's health and well-being as a result. The necessity and financial burden of this private  
12 enforcement, as well as the interest of justice, entitles Plaintiff to reasonable attorneys' fees and  
13 costs under California Code of Civil Procedure § 1021.5.

14 136. Plaintiff has been damaged in an amount within the jurisdictional limits of this Court.  
15

16 WHEREFORE, PLAINTIFF KEN MYERS prays for judgment against the Defendants, and each  
17 of them, as follows:

- 18 1. For general damages in an amount within the jurisdictional limits of this Court;
- 19 2. For special damages in an amount within the jurisdictional limits of this Court;
- 20 3. For medical expenses and related items of expense, according to proof;
- 21 4. For loss of earnings, according to proof;
- 22 5. For consequential and incidental damages according to proof;
- 23 6. For prejudgment interest according to proof;
- 24 7. For declaratory relief;
- 25 8. For injunctive relief;
- 26 9. For damages, penalties and attorneys' fees and costs of suit as provided for by California  
27 Government Code § 12965(b);
- 28 10. For civil penalties for each violation of California Labor Code § 1102.5;

1           11.       For damages, penalties and reasonable attorneys' fees and costs of suit as provided  
2 for by California Labor Code § 1102.5(f);

3           12.       For punitive and exemplary damages against Defendants, according to proof, as  
4 provided for by California Civil Code § 3294(a) and (b);

5           13.       For damages, penalties and reasonable attorneys' fees and costs of suit as provided  
6 for by California Code of Civil Procedure § 1021.5, according to proof;

7           14.       For such other and further relief as the Court may deem just and proper.

8  
9 Dated: April 21, 2023

**REISNER & KING LLP**

10 By: /s/Pola Bernabe  
11 POLA BERNABE  
12 Attorney for PLAINTIFF  
13 KEN MYERS  
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# **EXHIBIT A**



## Civil Rights Department

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  
calcivilrights.ca.gov | contact.center@dfeh.ca.gov

March 17, 2023

Adam Reisner  
15303 VENTURA BLVD STE 1260  
Sherman Oaks, CA 91403

RE: **Notice to Complainant's Attorney**  
CRD Matter Number: 202303-19987617  
Right to Sue: Myers / STATE DEPARTMENT OF FORESTRY AND FIRE  
PROTECTION et al.

Dear Adam Reisner:

Attached is a copy of your complaint of discrimination filed with the Civil Rights Department (CRD) pursuant to the California Fair Employment and Housing Act, Government Code section 12900 et seq. Also attached is a copy of your Notice of Case Closure and Right to Sue.

**Pursuant to Government Code section 12962, CRD will not serve these documents on the employer.** You must serve the complaint separately, to all named respondents. Please refer to the attached Notice of Case Closure and Right to Sue for information regarding filing a private lawsuit in the State of California. A courtesy "Notice of Filing of Discrimination Complaint" is attached for your convenience.

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

Sincerely,

Civil Rights Department



## Civil Rights Department

2218 Kausen Drive, Suite 100 | Elk Grove | CA | 95758  
800-884-1684 (voice) | 800-700-2320 (TTY) | California's Relay Service at 711  
calcivilrights.ca.gov | contact.center@dfeh.ca.gov

March 17, 2023

**RE: Notice of Filing of Discrimination Complaint**  
CRD Matter Number: 202303-19987617  
Right to Sue: Myers / STATE DEPARTMENT OF FORESTRY AND FIRE  
PROTECTION et al.

To All Respondent(s):

Enclosed is a copy of a complaint of discrimination that has been filed with the Civil Rights Department (CRD) in accordance with Government Code section 12960. This constitutes service of the complaint pursuant to Government Code section 12962. The complainant has requested an authorization to file a lawsuit. A copy of the Notice of Case Closure and Right to Sue is enclosed for your records.

This matter may qualify for CRD'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 CRD'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 CRD'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. You may contact CRD's Small Employer Family Leave Mediation Pilot Program by emailing [DRDOnlineRequests@dfeh.ca.gov](mailto:DRDOnlineRequests@dfeh.ca.gov) and include the CRD matter number indicated on the Right to Sue notice.

Please refer to the attached complaint for a list of all respondent(s) and their contact information.

No response to CRD is requested or required.



## Civil Rights Department

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  
[calcivilrights.ca.gov](http://calcivilrights.ca.gov) | [contact.center@dfeh.ca.gov](mailto:contact.center@dfeh.ca.gov)

Sincerely,

Civil Rights Department

1 **COMPLAINT OF EMPLOYMENT DISCRIMINATION**  
2 **BEFORE THE STATE OF CALIFORNIA**  
3 **Civil Rights Department**  
4 **Under the California Fair Employment and Housing Act**  
5 **(Gov. Code, § 12900 et seq.)**

6 **In the Matter of the Complaint of**

7 Ken Myers

CRD No. 202303-19987617

8 Complainant,

9 vs.

10 STATE DEPARTMENT OF FORESTRY AND FIRE  
11 PROTECTION  
12 15670 Monterey Road  
13 Morgan Hill, CA 95037

14 Tim Main

15 ,

16 Respondents

17  
18  
19 1. Respondent **STATE DEPARTMENT OF FORESTRY AND FIRE PROTECTION** is an  
20 **employer** subject to suit under the California Fair Employment and Housing Act (FEHA) (Gov.  
21 Code, § 12900 et seq.).

22 2. Complainant is naming **Tim Main** individual as Co-Respondent(s).

23 3. Complainant **Ken Myers**, resides in the City of **Sherman Oaks**, State of **CA**.

24 4. Complainant alleges that on or about **January 24, 2022**, respondent took the  
25 following adverse actions:

26 **Complainant was harassed** because of complainant's medical condition (cancer or genetic  
27 characteristic), other, association with a member of a protected class, disability (physical,  
28 intellectual/developmental, mental health/psychiatric), family care and medical leave (cfra)  
related to serious health condition of employee or family member, child bonding, or military  
exigencies.

**Complainant was discriminated against** because of complainant's medical condition  
(cancer or genetic characteristic), other, association with a member of a protected class,  
disability (physical, intellectual/developmental, mental health/psychiatric), family care and

-1-

*Complaint – CRD No. 202303-19987617*

Date Filed: March 17, 2023

1 medical leave (cfra) related to serious health condition of employee or family member, child  
2 bonding, or military exigencies and as a result of the discrimination was denied hire or  
3 promotion, reprimanded, denied equal pay, suspended, demoted, asked impermissible non-  
4 job-related questions, denied any employment benefit or privilege, denied work opportunities  
5 or assignments, denied or forced to transfer, denied accommodation for a disability, denied  
6 family care and medical leave (cfra) related to serious health condition of employee or family  
7 member, child bonding, or military exigencies.

8 **Complainant experienced retaliation** because complainant reported or resisted any form  
9 of discrimination or harassment, requested or used a disability-related accommodation,  
10 participated as a witness in a discrimination or harassment complaint, requested or used  
11 family care and medical leave (cfra) related to serious health condition of employee or family  
12 member, child bonding, or military exigencies and as a result was denied hire or promotion,  
13 reprimanded, denied equal pay, suspended, demoted, asked impermissible non-job-related  
14 questions, denied any employment benefit or privilege, denied work opportunities or  
15 assignments, denied or forced to transfer, denied accommodation for a disability, denied  
16 family care and medical leave (cfra) related to serious health condition of employee or family  
17 member, child bonding, or military exigencies.

18 **Additional Complaint Details:** Mr. Myers has worked for the Department since April 2003,  
19 when he was hired as a Firefighter II and subsequently promoted to Engineer. After several  
20 years of commitment and dedication to the Department, Mr. Myers was promoted to Fire  
21 Captain of Morgan Hill—a position he held since August 15, 2011, until the Department’s  
22 unlawful retaliation against him.

23 Mr. Myers was subjected to unlawful harassment, discrimination, and retaliation due to his  
24 actual/perceived disabilities and status as a whistleblower.

25 In October 2020, Mr. Myers became a part-time Logistics Officer for the Santa Clara Unit’s  
26 Service Center, while he continued working as a Fire Captain, because the former Logistics  
27 Officer retired. Subsequently, in December 2020, Mr. Myers undertook the Logistics Officer  
28 position on a full-time basis. As a Logistics Officer, Mr. Myers routinely used a state credit  
card to purchase firefighter gear and supplies worth approximately \$100,000. Mr. Myers was  
also required to complete paperwork when purchasing, distributing, or discarding firefighter  
gear.

Around October or November 2020, Chief Tim Main (“Chief Main”) transferred to the Santa  
Clara Unit and became Mr. Myers’ supervisor. Almost immediately, Chief Main subjected Mr.  
Myers to a hostile work environment, which became more severe and pervasive as Mr.  
Myers made complaints and protests to Chief Main about safety violations and state  
accounting issues. For example, Mr. Myers constantly protested Chief Main’s directives to  
purchase items with the state credit card outside of the normal purchasing process, as such  
purchases were impossible to track and account for. Chief Main would also direct firefighters  
to obtain gear from the Service Center without completing the necessary paperwork. As  
such, Mr. Myers protested that Chief Main’s directives made firefighter gear more  
susceptible to stealing. However, Chief Main refused to remediate Mr. Myers’ protests and,  
on several occasions, told him, “You will do it my way or get the fuck out.” Indeed, in  
response to Mr. Myers’ complaints and protests, Chief Main started telling other employees

1 that he was “going after” Mr. Myers and that they should “stay away” from Mr. Myers.  
2 Moreover, Chief Main started addressing Mr. Myers in a threatening or demeaning way, for  
3 instance, by yelling, “Get your fucking ass to my office now.”  
4 Therefore, Mr. Myers directed his complaints to Chief Marcucci, but Chief Main continued  
5 harassing Mr. Myers and started telling employees, “We’re going to hang him.”  
6 Unfortunately, the Department did not adequately investigate or remediate Mr. Myers’  
7 complaints. Instead, on April 15, 2021, the Department removed Mr. Myers from the  
8 Logistics Officer position and placed him back in the fire engine. Thereafter, Chief Main  
9 continued subjecting Mr. Myers to a hostile work environment and accusing Mr. Myers of  
10 being a “liar” whenever Mr. Myers tried to answer his questions.  
11 Later, on October 24, 2021, Mr. Myers filed an Internal Employee Complaint against Chief  
12 Main, which alleged a hostile work environment, retaliation, mental anguish, and defamation  
13 of character, among others. Mr. Myers also requested reasonable accommodations and  
14 suggested that the Department transfer him to a different unit. However, despite Mr. Myers’  
15 complaints and requests, the Department failed to engage in the mandatory good-faith  
16 interactive process. Indeed, the Department refused to take appropriate remedial action and  
17 did not take disciplinary action against Chief Main.

18 As a result, Chief Main’s unlawful and harassing conduct towards Mr. Myers only  
19 worsened. For example, Chief Main was aware that Mr. Myers had taken legally protected  
20 medical leave since 2018, either to attend mental health retreats or to seek treatment for  
21 Melanoma. Therefore, when Chief Main would meet with Mr. Myers and other employees,  
22 Chief Main would make discriminatory comments about employees who take legally  
23 protected medical leave for their actual/perceived disabilities. In one instance, after Engineer  
24 Josh Manley returned from the same mental health retreat that Mr. Myers had attended,  
25 Chief Main called a meeting with Mr. Myers and Engineer Manley. During this meeting, Chief  
26 Main harassed Engineer Manley for purported performance deficiencies and stated, “We are  
27 firemen. You burned a lot of bridges by taking that time off. You need to make it right with all  
28 of your co-workers.”  
29 Eventually, on June 17, 2022, Chief Main and management’s efforts to “hang” Mr. Myers  
30 proved to be successful, as the Department demoted Mr. Myers from Fire Captain to  
31 Firefighter II. While the Department claimed that Mr. Myers’ demotion was purportedly based  
32 on a false and unfounded allegation of patient abandonment, it only issued a written warning  
33 to Engineer Josh Manley regarding the same incident.  
34 Egregiously, the Department also held a cake party to celebrate Mr. Myers’ demotion, during  
35 which Chief Main boldly admitted that he was “singling out” Mr. Myers and “trying to get him  
36 fired.” Shortly thereafter, Chief Main shared photos of the cake party in a text message  
37 thread with several Fire Captains and Engineers. Then, Fire Captain Gil Rodriguez added, “I  
38 don’t eat sweets but dang that was the best cake ever.” In response, Fire Captain Herb  
39 Alpers said, “Aww man I woulda came down for that !!!! FUCK YEAH,” and Engineer  
40 Anthony Rhoades said, “It’s a fucking party. You guys are too funny.” Shortly thereafter, Mr.  
41 Myers was informed of this “celebration.”  
42 Thus, on August 11, 2022, Mr. Myers filed a second internal employee complaint regarding  
43 his demotion and the mental anguish that Chief Main has caused him, among others.  
44 Unfortunately, once again, the Department has failed to engage in the mandatory good-faith  
45 interactive process and has yet to take appropriate remedial action.

1 Consequently, the Department was in violation of California's whistleblower statute, which  
2 prohibits retaliation against employees who refuse to violate or complain about violations of  
the law.

3 Moreover, the FEHA makes it unlawful to harass, discriminate, and/or retaliate against an  
4 employee on account of protected classes and categories, such as the employee's  
5 actual/perceived disabilities. Cal. Gov. Code §§ 12940 et seq. Further, the FEHA requires  
employers to engage in a timely, good-faith interactive process with an employee to  
determine effective and reasonable accommodations, if any, for the employee's known  
6 mental/physical disability or known medical condition. Cal. Gov. Code § 12940(n).

7 Therefore, by harassing, discriminating, and retaliating against Mr. Myers based on his  
actual/perceived disabilities, and by failing to engage in the mandatory good-faith interactive  
process, the Department was in violation of the FEHA.



1 VERIFICATION

2 I, **Adam Reisner**, 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 March 17, 2023, I declare under penalty of perjury under the laws of the State of  
6 California that the foregoing is true and correct.

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**Sherman Oaks, California**

# **EXHIBIT B**



## Civil Rights Department

2218 Kausen Drive, Suite 100 | Elk Grove | CA | 95758  
800-884-1684 (voice) | 800-700-2320 (TTY) | California's Relay Service at 711  
calcivilrights.ca.gov | contact.center@dfeh.ca.gov

March 17, 2023

Ken Myers

c/o Reisner & King LLP 15303 Ventura Blvd. Ste 1260  
Sherman Oaks, CA 91403

**RE: Notice of Case Closure and Right to Sue**

CRD Matter Number: 202303-19987617

Right to Sue: Myers / STATE DEPARTMENT OF FORESTRY AND FIRE  
PROTECTION et al.

Dear Ken Myers:

This letter informs you that the above-referenced complaint filed with the Civil Rights Department (CRD) has been closed effective March 17, 2023 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 CRD'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 CRD'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 CRD'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 CRD's Small Employer Family Leave Mediation Pilot Program by emailing



## Civil Rights Department

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  
calcivilrights.ca.gov | contact.center@dfeh.ca.gov

DRDOnlineRequests@dfeh.ca.gov and include the CRD matter number indicated on the Right to Sue notice.

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 CRD Notice of Case Closure or within 300 days of the alleged discriminatory act, whichever is earlier.

Sincerely,

Civil Rights Department

# **EXHIBIT C**

02/22/2023

Adam Reisner  
Attorney at Law  
15303 Ventura Blvd., Suite 1260  
Sherman Oaks, CA 91403

RE: Claim 23013201 for Ken Myers against California Department of Forestry and Fire Protection

Dear Adam Reisner,

Government Claims Program (GCP) staff completed its investigation of your claim and rejected it for the following reasons.

The claim involves complex issues that are beyond the scope of analysis and legal interpretation typically undertaken by the GCP. Claims involving complex issues are best determined by the courts. Therefore, staff did not make a determination regarding the merit of the claim, and it is being rejected so you can initiate court action if you choose to pursue this matter further.

If you choose to pursue court action in this matter, it is not necessary or proper to include the GCP in your lawsuit unless the GCP was identified as a defendant in your original claim. Please consult Government Code section 955.4 regarding proper service of the summons.

If you have questions about this matter, please feel free to contact GCP by phone, mail, or email using the contact information below. Please remember to reference the assigned claim number (23013201) in your communication.

Sincerely,



Sheila Emami, Program Analyst  
Government Claims Program  
gcinfo@dgs.ca.gov

**WARNING:** Subject to certain exceptions, you have only six (6) months from the date this notice was personally delivered or deposited in the mail to file a court action on this claim. See Government Code Section 945.6. You may seek the advice of an attorney of your choice in connection with this matter. If you desire to consult an attorney, you should do so immediately.

**DECLARATION OF SERVICE BY U.S. MAIL**

Name of Claimant: Ken Myers  
GCP File no.: 23013201

I am employed by the Government Claims Program. I am 18 years of age or older. I am familiar with the business practice at the Government Claims Program for collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at the Government Claims Program is deposited with the United States Postal Service with postage thereon fully prepaid that same day in the ordinary course of business. On 02/22/2023, I served the attached letter by placing a true copy thereof enclosed in a sealed envelope in the internal mail collection system at the Government Claims Program, located at 707 Third Street, West Sacramento, CA 95605, addressed as follows:

Adam Reisner  
Attorney at Law  
15303 Ventura Blvd., Suite 1260  
Sherman Oaks, CA 91403

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration was executed on 02/22/2023, at West Sacramento, California.



---

Sheila Emami

**FEB 28 2023**

via U.S.  
Mail