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SUPERIOR COURT OF CALIFORNIA
COUNTY OF RIVERSIDE

FEB 07 2013

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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF RIVERSIDE**

BRUCE B. CLEGG, an individual,

Plaintiff,

vs.

KAISER FOUNDATION HOSPITALS, a
California Corporation; and DOES 1
THROUGH 10, inclusive,

Defendants.

Case No.

RIC 1301616

COMPLAINT FOR DAMAGES

- 1. DISABILITY DISCRIMINATION**
(Violation of Govt. Code §12940(a))
- 2. FAILURE TO ACCOMMODATE DISABILITY**
(Violation of Govt. Code §12940(m))
- 3. FAILURE TO ENGAGE IN THE INTERACTIVE PROCESS**
(Violation of Govt. Code §12940(n))
- 4. DISABILITY HARASSMENT**
(Violation of Govt. Code § 12940(j))
- 5. FAILURE TO PREVENT DISCRIMINATION AND HARASSMENT**
(Violation of Cal. Gov't Code §12940(k))
- 6. RETALIATION**
(Violation of Cal. Gov't Code §12940(h))
- 7. VIOLATION OF CALIFORNIA FAMILY RIGHTS ACT**
(Cal. Government Code § 12945.2)
- 8. RETALIATION**
(Violation of Cal. Labor Code § 1102.5 Pursuant to California Labor Code Private Attorney General Act of 2699 *et seq.*)
- 9. RETALIATION**
(Violation of Cal. Labor Code § 6310)
- 10. RETALIATION**

(Violation of Cal. Health & Safety Code § 1278.5)

11. FAILURE TO INDEMNIFY

(Violation of Labor Code § 2802)

12. WAITING TIME PENALTIES

(Labor Code §§ 201-203)

13. UNFAIR BUSINESS PRACTICES

(Violation of Cal. Gov't Code §12940)

DEMAND FOR JURY TRIAL

I. INTRODUCTION

This is an action brought by Plaintiff BRUCE B. CLEGG ("Plaintiff") against KAISER FOUNDATION HOSPITALS, a California Corporation, and other as of yet unnamed Defendants (hereinafter collectively "Defendants") alleging, among other things, violations of the California Fair Employment and Housing Act, California Labor Code, the California Government Code, and the California Health & Safety Code. Plaintiff seeks damages, injunctive relief, attorneys' fees and costs of suit.

II. GENERAL ALLEGATIONS

1. This Court is the proper court and this action is properly filed in the County of Riverside and in this judicial district because Defendants do business in the County of Riverside and Defendant's obligations and liability arise therein.

2. Plaintiff is a former non-exempt employee of Defendants and a resident of the County of Los Angeles, State of California.

3. Plaintiff is informed and believes, and thereon alleges that KAISER FOUNDATION HOSPITALS is a California corporation doing business in the County of Riverside, State of California.

4. The true names and capacities, whether individual, corporate, associate, or otherwise, of DOES 1 through 10 are unknown to Plaintiff, who therefore sues the DOE Defendants by fictitious names. Plaintiff will amend this Complaint to show their true names and capacities when they have been ascertained.

1 5. Plaintiff is informed and believes, and thereon alleges, that each and all of the acts
2 and omissions alleged herein were performed by, and/or are attributable to, all Defendants, each
3 acting as agents and/or employees, and/or under the direction and control of each of the other
4 Defendants, and that said acts and failures to act were within the course and scope of said
5 agency, employment and/or direction and control. Plaintiff is informed and believes, and thereon
6 alleges, that at all times material hereto Defendants were and are the agents of each other.

7 6. Plaintiff is informed and believes, and thereon alleges, that Defendant DOES 1
8 through 10 are the partners, owners, shareholders, or managers of Defendant Employer, and were
9 acting on behalf of Defendant Employer in the payment of wages to Plaintiff.

10 7. At all relevant times alleged herein, Defendants employed Plaintiff and Plaintiff held
11 a position at KAISER FOUNDATION HOSPITALS, a California corporation, in the County of
12 Riverside, State of California.

13 **III. FACTS COMMON TO MORE THAN ONE CAUSE OF ACTION**

14 8. Plaintiff's employment with Defendant began on approximately April 12, 2002 as a
15 carpenter.

16 9. Throughout Plaintiff's employment, he made numerous reports, complaints, and/or
17 objections to what he reasonably believed to be and/or in fact were Defendant's violations of the
18 Fair Employment and Housing Act, California Family Rights Act, the California Health and
19 Safety Code, the California Government Code, and/or the California Labor Code, while making
20 such reports, complaints, and/or objections to Defendants, including, but not limited to, its
21 supervisors, managers, Human Resources, and/or its Compliance Department, and/or to various
22 federal and/or state agencies about Defendant's wrongful conduct described herein. Following
23 most, if not all of these reports, complaints, and/or objections, Defendant retaliated,
24 discriminated, and/or harassed Plaintiff as described herein.

25 10. Following Plaintiff's 2009 injuries, Plaintiff made numerous requests to Defendant
26 that it provide him with a reasonable accommodation for his disabilities. Following most, if not
27 all of these requests, Defendant retaliated, discriminated, and/or harassed Plaintiff as described
28 herein.

1 11. On or about May 25, 2008, Defendant promoted Plaintiff to a nonworking foreman
2 position. As a nonworking foreman, Defendant did not require Plaintiff to routinely perform
3 strenuous physical labor like when he was a carpenter.

4 12. Numerous times during Plaintiff's employment with Defendant, Plaintiff reported to
5 his supervisors and/or management, and to Defendant's Compliance Department, that Defendant
6 had defective ceilings which were creating safety issues for its employees and patients.

7 13. On or around March, 2009 Plaintiff reported Defendant's employee, Rick Thacker,
8 to General Superintendent Jim Bitzlehold ("Mr. Bitzlehold") for stealing from Defendant's job
9 site. After this complaint, Mr. Thacker's roommate and Defendant's Lead Foreman, Francisco
10 Zepeda's ("Mr. Zepeda"), retaliated against Plaintiff.

11 14. In or around June, 2009 Plaintiff reported Defendant's employee, Erazmo Roman
12 ("Mr. Roman"), to Defendant's Compliance Department for the suspected theft of Defendant's
13 boiler.

14 15. In or around July, 2009 investigator Larry Morgan ("Mr. Morgan") interviewed
15 Plaintiff about the stolen boiler and about Defendant's stolen computers. Plaintiff cooperated
16 with this investigation and reported to Mr. Morgan that he overheard Defendant's employees
17 saying Mr. Zepeda and Mr. Thacker stole these computers.

18 16. Following these reports, Plaintiff made multiple complaints to Mr. Bitzlehold about
19 Mr. Zepeda's retaliatory conduct towards Plaintiff. Instead of appropriately addressing Mr.
20 Zepeda's wrongful conduct, Mr. Bitzlehold told Plaintiff to "take him outside and kick his ass."

21 17. Plaintiff is informed and believes Mr. Zepeda, among other wrongful conduct, broke
22 the taillight on Plaintiff's car, caused workers assigned to work with Plaintiff to be terminated,
23 and repeatedly flipped Plaintiff off with his middle finger.

24 18. In or around late-2009, Plaintiff reported Charles Leonard ("Mr. Leonard") and
25 Randy Florence ("Mr. Florence") to Defendant, including, but not limited to, its Compliance
26 Officer Arlene Harrity (Ms. "Harrity"), for fraudulently causing Defendant to pay for labor and
27 materials used at Mr. Florence's private residence. At all relevant times, Plaintiff was informed
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1 and believed these funds included state and/or federal funds received by Defendant. Plaintiff then
2 participated in an investigation of this reported fraud.

3 19. At the time of their wrongful conduct, Plaintiff was informed and believed his
4 employer was a publically traded company and its shareholders were being defrauded by
5 Leonard's and Mr. Florence's fraudulent conduct.

6 20. Defendants, including, but not limited to, Mr. Leonard, Mr. Bitzlehold, and Mr.
7 Florence, retaliated against Plaintiff for whistleblowing and/or objecting to Defendant's
8 wrongful conduct, which was then carried out by other supervisors, management, and co-
9 workers working under and/or with Mr. Florence, Mr. Bitzlehold, and/or Mr. Leonard. This
10 retaliation included, but was not limited to, the following: (1) delays and/or refusals of Plaintiff's
11 requests for workers and supplies; (2) yelling, belittling, and hanging-up on Plaintiff repeatedly;
12 (3) threatening to remove Plaintiff from projects; (4) threatening Plaintiff with a demotion and
13 termination; (4) reprimanding Plaintiff; (5) failing to accommodate Plaintiff's disabilities and
14 engaging in the interactive process; and (6) Defendant's wrongful conduct described as follows.

15 21. In late-2009 ("2009 injuries"), Plaintiff injured his shoulders while performing work
16 on Defendant's behalves.

17 22. Plaintiff informed, among others, Mr. Bitzlehold, Mr. Leonard, and Mr. Florence
18 about his 2009 injuries and about his doctor releasing him to return to work with work
19 restrictions.

20 23. Despite Defendant having accommodated others of its employees, Mr. Leonard and
21 Mr. Charles summarily refused to allow Plaintiff to return to work. Defendant then forced
22 Plaintiff to take a medical leave of absence from his employment with Defendant beginning from
23 approximately November 10, 2009 through approximately August 27, 2011 ("medical leave").

24 24. Throughout this medical leave, Plaintiff provided Defendant, including, but not
25 limited to, Mr. Leonard and Mr. Florence, updates about his disabilities and related treatment.
26 Plaintiff also made repeated requests to return to work. Defendant responded by, but not limited
27 to, summarily denying his requests, hanging-up on him, and even stating Defendant do not
28 provide its employees with modified duty.

1 25. When discovered, Plaintiff also informed Defendant about additional work-related
2 injuries to his wrists, hands, and spine.

3 26. Sometime in or around early-2010, Plaintiff complained to the State of California
4 Department of Justice, Attorney General, about Defendant's wrongful conduct, including, but
5 not limited to, whistleblower retaliation.

6 27. Sometime in early to mid-2010, Plaintiff complained to the California Department of
7 Industrial Relations Division of Occupational Safety and Health ("Cal. DOSH") about, but not
8 limited to, Defendant's defective ceilings, fraud, and whistleblower retaliation.

9 28. Beginning in early to mid-2010, Plaintiff complained to the United States
10 Department of Labor Occupational Safety & Health Administration ("Fed. OSHA") about, but
11 not limited to, Defendant's defective ceilings, fraud, and whistleblower retaliation.

12 29. Plaintiff is informed and believes Defendant was aware of some, if not all, of these
13 complaints, and/or suspected Plaintiff would make some, if not all, of these complaints prior to
14 him making them.

15 30. On or about August 29, 2011, Plaintiff returned to work with work restrictions.
16 Plaintiff provided Defendant with these work restrictions.

17 31. Immediately after returning to work from medical leave, Defendant required Plaintiff
18 to perform work in violation of his work restrictions.

19 32. On more than one occasion, Plaintiff objected to Defendant assigning him work in
20 violation of his work restrictions.

21 33. Defendant retaliated against, discriminated against, and/or harassed Plaintiff for,
22 among other things, making numerous reports, complaints, and/or objections to what he
23 reasonably believed to be and/or in fact were Defendants violations of the Fair Employment and
24 Housing Act, California Family Rights Act, the California Health and Safety Code, the
25 California Government Code, and/or the California Labor Code (among others), while making
26 such reports, complaints, and/or objections to Defendant, including, but not limited to, its
27 supervisors, managers, Human Resources, and/or its Compliance Department, and/or to various
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1 federal and/or state agencies about Defendant's wrongful conduct described herein, by, but not
2 limited to: (1) reassigning Plaintiff to a new location(s) on more than one occasion; (2) changing
3 Plaintiff's work hours; (3) reassigning Plaintiff to a working foreman position; (4) summarily
4 denying Plaintiff's requested reasonable accommodations for his disabilities; (5) refusing to
5 engage in the interactive process; (6) failing to provide Plaintiff with any reasonable
6 accommodation for his disabilities; (7) forcing Plaintiff to perform work in violation of his work
7 restrictions which exacerbated Plaintiff's disabilities and/or caused new injuries to Plaintiff; (8)
8 allowing its employees to belittle Plaintiff; (9) reprimanding and belittling Plaintiff after
9 performing duties as directed by his supervisors; (10) on more than one occasion, Mr. Reggles
10 engaged Plaintiff in a heated verbal confrontation, cursed at Plaintiff, got in Plaintiff's face,
11 grabbed him by the neck and shoulder area causing him pain and to fear for his immediate safety,
12 belittled Plaintiff, and/or taunted him; and/or (11) on more than one occasion, Mr. Bitzlehold
13 questioned Plaintiff about his whistleblowing, threatened Plaintiff to stop whistleblowing
14 because Mr. Florence and Mr. Leonard were going to "fire us all," and told him he was in "deep
15 shit" for whistleblowing.

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17 34. Defendant also refused to reimburse Plaintiff for work related costs.

18 35. In or around August, 2012 after Plaintiff provided Mr. Florence with additional work
19 restrictions, Mr. Florence told Plaintiff he could no longer work because Defendant does not
20 allow modified duty.

21 36. Plaintiff, again, complained to Defendant, including, but not limited to, Mr.
22 Florence, about Defendant's discriminatory, retaliatory, and harassing treatment of him, and of
23 its failure to accommodate his disabilities. Despite these objections, Defendant refused to allow
24 Plaintiff to return to work.

25 37. As a result of Defendant's failure to engage in the interactive process and provide
26 Plaintiff with a reasonable accommodation for his disabilities, Plaintiff's disabilities have been
27 exacerbated and/or he has suffered additional injuries.

1 38. Plaintiff's disabilities caused him chronic pain and limited the major life activity of
2 working.

3 39. Construction Manager Mr. Florence, General Foreman Mr. Leonard, Lead Foreman
4 Mr. Zepeda, General Superintendent Mr. Bitzlehold, Superintendent Mr. Reggles, and Lead
5 Foreman Jeff Reynolds were Plaintiff's supervisors and part of Defendant's construction
6 management team for its Riverside region, and are managing agents, directors, and/or officers of
7 Defendant.

8 40. Defendant also failed to notify Plaintiff of his right to, and/or grant him, protected
9 medical leave pursuant to the California Family Rights Act and/or the Family and Medical Leave
10 Act.

11 41. Further, the California Labor Code Private Attorneys General Act of 2004
12 ("PAGA") (codified at California Labor Code sections 2698 through 2699.5) authorizes a
13 present or past employee civil action for applicable employer violations of California Labor
14 Code, along with costs and reasonable attorneys' fees pursuant to California Labor Code
15 sections 2699.3(a) and 2699.5. California Labor Code section 2699.3(a)(2)(B), (C) respectively
16 authorize an aggrieved employee within the meaning of California Labor Code section 2699(c)
17 to commence a civil action, or to amend an existing suit as of right, pursuant to the procedures
18 set forth in California Labor Code section 2699.3.

19 42. On September 26, 2012, Plaintiff sent a notice of the alleged Labor Code violations
20 by Defendant to the Labor and Workforce Development Agency (LWDA) pursuant to Labor
21 Code section 2699. More than 33 days have passed since Plaintiff provided such notice.
22 Therefore, Plaintiff has properly exhausted the administrative requirements pursuant to PAGA.

23 43. As a direct and proximate result of Defendant's unlawful acts, Plaintiff has suffered
24 and continues to suffer from loss of earnings, interest and penalties in amounts as yet
25 unascertained, but subject to proof at trial. Plaintiff petitioned the management of Defendant to
26 stop such practices. Because Defendant ignored such petitions, Plaintiff was required to file an
27 administrative complaint to the Department of Fair Employment and Housing ("DFEH"). On or
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1 about March 12, 2012 and November 28, 2012, the DFEH issued Plaintiff right to sue letters.
2 Plaintiff has fully complied with the administrative prerequisites to the filing of his claims.

3 **IV. FIRST CAUSE OF ACTION**

4 **(Disability Discrimination – Violation of Govt. Code §12940(a))**

5 **(Plaintiff against All Defendants)**

6 44. Plaintiff re-alleges and incorporates herein by reference paragraphs 1 through 43,
7 inclusive, as though fully set forth herein.

8 45. The Fair Employment and Housing Act (“FEHA”) codified in Government Code
9 §12900 et seq. makes it unlawful for an employer to discriminate against an employee on the
10 basis of the employee’s disability.

11 46. Plaintiff had disabilities under the FEHA in that his shoulders, wrists, hands, and
12 spine disabilities caused Plaintiff chronic pain and limited major life activities, including, but not
13 limited to, working. As alleged herein, Defendants knew that Plaintiff had these disabilities.

14 47. Defendants engaged in unlawful employment practices in violation of the FEHA by,
15 but not limited to, subjecting Plaintiff to the unlawful conduct and omissions as alleged herein.

16 48. Plaintiff is informed and believes and based thereon alleges that his disabilities were
17 a motivating factor in Defendant’s decisions to take such unlawful adverse actions as alleged
18 herein against him in violation of Government Code §12940(a).

19 49. As a proximate result of the wrongful conduct of Defendants, and each of them,
20 Plaintiff has suffered and continues to sustain substantial losses in earnings and/or other
21 employment benefits in an amount according to proof at the time of trial.

22 50. As a proximate result of the wrongful conduct of Defendants, and each of them,
23 Plaintiff has suffered physical injury, humiliation, emotional distress, mental pain and anguish,
24 and all to his damage in an amount according to proof at the time of trial.

25 51. The actions and/or omissions of Defendants in discriminating against Plaintiff
26 because of his disabilities as alleged herein were carried out with malice, willfulness and/or
27 reckless indifference to the rights of Plaintiff, with full knowledge of their unlawfulness, and
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1 with the intent to deprive Plaintiff of the rights guaranteed to him under the law. Plaintiff is
2 entitled to punitive damages for the purpose of deterring such unlawful, malicious, oppressive
3 and/or reckless conduct.

4 52. Plaintiff has also incurred and continues to incur attorneys' fees and legal expenses in
5 an amount according to proof at the time of trial.

6 **V. SECOND CAUSE OF ACTION**

7 **(Failure to Accommodate Disability – Govt. Code §12940(m))**

8 **(Plaintiff against All Defendants)**

9 53. Plaintiff restates and incorporates by reference each and every allegation contained
10 in paragraphs 1 through 43, inclusive, as though fully set forth herein.

11 54. Government Code §12940(m) provides that it is unlawful for an employer to fail to
12 make a reasonable accommodation for the known physical disability of an employee.

13 55. Defendants failed to make a reasonable accommodation for Plaintiff's known
14 disabilities when they, among other things and as alleged herein, assigned him to perform duties
15 in violation of his work restrictions, summarily denied his requests to return to work, and
16 summarily denied each of his requests for a reasonable accommodation.

17 56. As a proximate result of the wrongful conduct of Defendants, and each of them,
18 Plaintiff has suffered and continues to sustain substantial losses in earnings and/or other
19 employment benefits in an amount according to proof at the time of trial.

20 57. As a proximate result of the wrongful conduct of Defendants, and each of them,
21 Plaintiff has suffered physical injury, humiliation, emotional distress, and mental pain and
22 anguish, all to his damage in an amount according to proof at the time of trial.

23 58. The actions and/or omissions of Defendants as alleged herein in failing to provide
24 Plaintiff with a reasonable accommodation were carried out with malice, willfulness and/or
25 reckless indifference to the rights of Plaintiff, with full knowledge of their unlawfulness, and
26 with the intent to deprive Plaintiff of the rights guaranteed to him under the law. Plaintiff is
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1 entitled to punitive damages for the purpose of deterring such unlawful, malicious, oppressive
2 and/or reckless conduct.

3 59. Plaintiff has also incurred and continues to incur attorneys' fees and legal expenses in
4 an amount according to proof at the time of trial.

5 VI. THIRD CAUSE OF ACTION

6 (Failure to Engage in the Interactive Process - Govt. Code §12940(n))

7 (Plaintiff against All Defendants)

8 60. Plaintiff restates and incorporates by reference each and every allegation contained
9 in paragraphs 1 through 43, inclusive, as though fully set forth herein.

10 61. Government Code §12940(n) provides that it is unlawful for an employer to fail to
11 engage in a timely, good faith, interactive process with the employee to determine effective
12 reasonable accommodations.

13 62. Instead of engaging in the interactive process with Plaintiff in order to accommodate
14 Plaintiff's disabilities, Defendants, among other things and as alleged herein, required Plaintiff to
15 perform duties in violation of his work restrictions, summarily refused to allow Plaintiff to return
16 to work following his 2009 injuries, hang-up on Plaintiff and told Plaintiff it did not provide its
17 employee's with modified duty in response to Plaintiff's requests to return to work and for a
18 reasonable accommodation, and summarily refused Plaintiff's requested reasonable
19 accommodations.
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21 63. As a proximate result of the wrongful conduct of Defendants, and each of them,
22 Plaintiff has suffered and continues to sustain substantial losses in earnings and/or other
23 employment benefits in an amount according to proof at the time of trial.

24 64. As a proximate result of the wrongful conduct of Defendants, and each of them,
25 Plaintiff has suffered physical injury, humiliation, emotional distress, mental pain and anguish,
26 and all to his damage in an amount according to proof at the time of trial.

27 65. The actions and/or omissions of Defendants in failing to engage in the interactive
28 process with Plaintiff as alleged herein were carried out with malice, willfulness and/or reckless

1 indifference to the rights of Plaintiff, with full knowledge of their unlawfulness, and with the
2 intent to deprive Plaintiff of the rights guaranteed to him under the law. Plaintiff is entitled to
3 punitive damages for the purpose of deterring such unlawful, malicious, oppressive and/or
4 reckless conduct.

5 66. Plaintiff has also incurred and continues to incur attorneys' fees and legal expenses in
6 an amount according to proof at the time of trial.

7 **VII. FOURTH CAUSE OF ACTION**
8 **(Disability Harassment - Govt. Code §12940)**
9 **(Plaintiff against All Defendants)**

10 67. Plaintiff restates and incorporates by reference each and every allegation contained
11 in paragraphs 1 through 43, inclusive, as though fully set forth herein.

12 68. The Fair Employment and Housing Act ("FEHA") codified in Government Code
13 §12900 et seq. makes it unlawful for an employer to harass an employee on the basis of the
14 employee's disability.

15 69. Plaintiff had disabilities under the FEHA which Defendants knew about as alleged
16 herein.

17 70. Defendants and each of them and/or their agents/employees engaged in a pattern and
18 practice of unlawful disability harassment in violation of California Fair Employment and
19 Housing Act ("FEHA") of California Government Code §12940(j) as alleged herein.

20 71. The harassment was sufficiently pervasive and severe as to alter conditions of
21 employment and to create a hostile or abusive work environment as alleged herein.

22 72. Plaintiff is informed and believes and based thereon alleges that his disabilities were
23 a motivating factor in Defendant's decisions to take such unlawful employment practices against
24 him in violation of Government Code §12940 as alleged herein.

25 73. As a proximate result of the wrongful conduct of Defendants, and each of them,
26 Plaintiff has suffered and continues to sustain substantial losses in earnings and/or other
27 employment benefits in an amount according to proof at the time of trial.
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1 74. As a proximate result of the wrongful conduct of Defendants, and each of them,
2 Plaintiff has suffered physical injury, humiliation, emotional distress, mental pain and anguish,
3 and all to his damage in an amount according to proof at the time of trial.

4 75. The actions and/or omissions of Defendants in harassing Plaintiff because of his
5 disabilities as alleged herein were carried out with malice, willfulness and/or reckless
6 indifference to the rights of Plaintiff, with full knowledge of their unlawfulness, and with the
7 intent to deprive Plaintiff of the rights guaranteed to him under the law. Plaintiff is entitled to
8 punitive damages for the purpose of deterring such unlawful, malicious, oppressive and/or
9 reckless conduct.

10 76. Plaintiff has also incurred and continues to incur attorneys' fees and legal expenses in
11 an amount according to proof at the time of trial

12 **VIII. FIFTH CAUSE OF ACTION**

13 **(Failure to Prevent Discrimination and Harassment - Violation of Cal. Gov't Code** 14 **§12940(k)) (Plaintiff against All Defendants)**

15 77. Plaintiff restates and incorporates by reference each and every allegation contained
16 in paragraphs 1 through 43, inclusive, as though fully set forth herein.

17 78. To Plaintiff's knowledge, no meaningful or adequate disciplinary action has been
18 taken against any employees who discriminated against and/or harassed Plaintiff.

19 79. In violation of Cal. Gov. Code §§12940(k), Defendants and each of them, and/or
20 their agents/employees, failed to take all reasonable steps necessary to prevent and investigate
21 unlawful discrimination and harassment from occurring, and to remedy such wrongful conduct.

22 80. As a proximate result of the wrongful conduct of Defendants, and each of them,
23 Plaintiff has suffered and continues to sustain substantial losses in earnings and/or other
24 employment benefits in an amount according to proof at the time of trial.

25 81. As a proximate result of the wrongful conduct of Defendants, and each of them,
26 Plaintiff has suffered physical injury, humiliation, emotional distress, mental pain and anguish,
27 and all to his damage in an amount according to proof at the time of trial.
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1 82. The actions and/or omissions of Defendants in failing to prevent discrimination and
2 harassment as alleged herein were carried out with malice, willfulness and/or reckless
3 indifference to the rights of Plaintiff, with full knowledge of their unlawfulness, and with the
4 intent to deprive Plaintiff of the rights guaranteed to him under the law. Plaintiff is entitled to
5 punitive damages for the purpose of deterring such unlawful, malicious, oppressive and/or
6 reckless conduct.

7 83. Plaintiff has also incurred and continues to incur attorneys' fees and legal expenses in
8 an amount according to proof at the time of trial.

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10 **IX. SIXTH CAUSE OF ACTION**
11 **(Retaliation – Violation of Cal. Gov't Code §12940(h))**
12 **(Plaintiff against All Defendants)**

13 84. Plaintiff restates and incorporates by reference each and every allegation contained
14 in paragraphs 1 through 43, inclusive, as though fully set forth herein.

15 85. During his employment, Plaintiff engaged in the following, but not limited to,
16 protected activities and as alleged herein. (1) Plaintiff requested reasonable accommodations for
17 his disabilities; and (2) Plaintiff objected to Defendant's violations of his rights under the Fair
18 Employment and Housing Act.

19 86. After Plaintiff engaged in these, among other, protected activities, Defendants
20 subjected Plaintiff to adverse actions, including, but not limited to those alleged herein.

21 87. As a proximate result of the wrongful conduct of Defendants, and each of them,
22 Plaintiff has suffered and continues to sustain substantial losses in earnings and other
23 employment benefits in an amount according to proof at the time of trial.

24 88. As a proximate result of the wrongful conduct of Defendants, and each of them,
25 Plaintiff has suffered physical injury, humiliation, emotional distress, and mental pain and
26 anguish, all to his damage in an amount according to proof at the time of trial.

27 89. The actions of Defendants in retaliating against Plaintiff as alleged herein was
28 carried out with malice, willfulness and/or reckless indifference to the rights of Plaintiff, with

1 full knowledge of their unlawfulness, and with the intent to deprive Plaintiff of the rights
2 guaranteed to him under the law. Plaintiff is entitled to punitive damages for the purpose of
3 deterring such unlawful, malicious, oppressive and/or reckless conduct.

4 90. Plaintiff has also incurred and continues to incur attorneys' fees and legal expenses in
5 an amount according to proof at the time of trial.

6 **X. SEVENTH CAUSE OF ACTION**

7 **(Violation of the California Family Rights Act- Government Code Section 12945.2)**

8 **(Plaintiff against All Defendants)**

9 91. Plaintiff restates and incorporates by reference each and every allegation contained
10 in paragraphs 1 through 43, inclusive, as though fully set forth herein.

11 92. At all times herein mentioned, Government Code § 12945.2 was in full force and
12 effect, and was binding upon Defendants. Said section required Defendants, its employees and
13 agents, to not discriminate against or discharge Plaintiff because he had exercised his right to
14 medical leave protected by the CFRA.

15 93. Government Code § 12945.2 also prohibits Defendants from "refus[ing] to grant a
16 request by any employee with more than 12 months of service with the employer, and who has at
17 least 1,250 hours of service with the employer during the previous 12-month period, to take up to
18 a total of 12 workweeks in any 12 -month period for family care and medical leave. Family care
19 and a medical leave requested pursuant to this subdivision shall not be deemed to have been
20 granted unless the employer provides the employee, upon granting the leave request, a guarantee
21 of employment in the same or a comparable position upon the termination of the leave."

22 94. Plaintiff qualified for CFRA leave because at the time he went out on medical leave,
23 he worked for Defendants for 1,250 hours in the past 12 months. Defendant had a duty to offer
24 the medical leave to Plaintiff if they knew or should have known that Plaintiff would need
25 medical leave.

26 95. Instead, Defendants, among other things and as alleged herein, refused to allow
27 Plaintiff a qualifying medical leave of absence under the CFRA, it failed to notify him of his
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1 CFRA rights; it refused to return him to work; then subsequently returned him to a different
2 location and position, and changed his work hours.

3 96. Plaintiff is informed and believes and thereon alleges the acts of Defendants in
4 discriminating against and retaliating against him for exercising his rights to a medical leave of
5 absence for health condition(s) which were covered by the CFRA are unlawful employment
6 practices in violation of the CFRA.

7 97. Such unlawful employment actions included, but were not limited to, Defendant's
8 unlawful conduct and omissions as alleged herein.

9 98. As a proximate result of the wrongful conduct of Defendants, and each of them,
10 Plaintiff has suffered and continues to sustain substantial losses in earnings and other
11 employment benefits in an amount according to proof at the time of trial.

12 99. As a proximate result of the wrongful conduct of Defendants, and each of them,
13 Plaintiff has suffered physical injury, humiliation, emotional distress, and mental pain and
14 anguish, all to his damage in an amount according to proof at the time of trial.

15 100. The actions of Defendants in discriminating and retaliating against Plaintiff, as
16 alleged herein, because he exercised his rights under the California Family Rights Act were
17 carried out with malice, willfulness, and/or reckless indifference to the rights of Plaintiff, with
18 full knowledge of their unlawfulness, and with the intent to deprive Plaintiff of the rights
19 guaranteed to him under the law. Plaintiff is entitled to punitive damages for the purpose of
20 deterring such unlawful, malicious, oppressive and/or reckless conduct.

21 101. Plaintiff has also incurred and continues to incur attorneys' fees and legal expenses in
22 an amount according to proof at the time of trial.

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1 **XI. EIGHTH CAUSE OF ACTION**

2 **(Labor Code Retaliation in Violation of Section 1102.5 Pursuant to California Labor Code**
3 **Private Attorneys General Act of 2699 *et seq.*)**

4 **(Plaintiff against All Defendants)**

5 102. Plaintiff restates and incorporates by reference each and every allegation contained
6 in paragraphs 1 through 43, inclusive, as though fully set forth herein.

7 103. California Labor Code section 1102.5 prohibits an employer from making, adopting
8 or enforcing a policy preventing an employee from, or retaliating against an employee for,
9 reporting information to a government or law enforcement agency where the employee has
10 reasonable cause to believe the information discloses a violation of a state or federal statute, or a
11 violation of or noncompliance with a state or federal rule or regulation.

12 104. Labor Code section 1102.5 further prohibits an employer from retaliating against an
13 employee for refusing to participate in an activity that would result in a violation of state or
14 federal statute, or a violation of or non-compliance with a state or federal rule or regulation.

15 105. During Plaintiff's employment, he engaged in, but not limited to, the following
16 protected activities and as alleged herein: (1) Plaintiff reported what he reasonably believed to be
17 and/or were in fact employee safety and/or health violations by Defendants pursuant to the
18 California Labor Code to his employer, including, but not limited to, his supervisors and to
19 government agencies; (2) Plaintiff reported what he reasonably believed to be and/or were in
20 fact unsafe patient conditions pursuant to the California Health & Safety Code to his employer,
21 including, but not limited to, his supervisors and to government agencies; and (3) Plaintiff
22 refused to participate in Defendant's activities violating and/or not complying with federal and/or
23 state law, including, but not limited to, such laws stated herein.

24 106. Defendants violated section 1102.5(c) when it retaliated against Plaintiff by, but not
25 limited to, its actions and/or omissions as alleged herein for reporting and/or objecting to
26 Defendant's wrongful conduct as alleged herein.
27
28

1 107. As a proximate result of the wrongful conduct of Defendants, and each of them,
2 Plaintiff has suffered and continues to sustain substantial losses in earnings and other
3 employment benefits in an amount according to proof at the time of trial.

4 108. As a proximate result of the wrongful conduct of Defendants, and each of them,
5 Plaintiff has suffered humiliation, emotional distress, and mental pain and anguish, all to his
6 damage in an amount according to proof at the time of trial.

7 109. Plaintiff has also incurred and continues to incur attorneys' fees and legal expenses in
8 an amount according to proof at the time of trial.

9
10 **XII. NINTH CAUSE OF ACTION**
11 **(Labor Code Retaliation in Violation of Section 6310)**
12 **(Plaintiff against All Defendants)**

13 110. Plaintiff restates and incorporates by reference each and every allegation contained
14 in paragraphs 1 through 43, inclusive, as though fully set forth herein.

15 111. California Labor Code § 6310 prohibits employers from discharging, constructively
16 discharging, retaliating or in any manner discriminating against any employee for making any
17 oral or written health and/or safety complaint, or complaint regarding working conditions to a
18 governmental agency or their employer. Section 6310 also prohibits an employer from retaliating
19 against employees whom they suspect will file a complaint related to workplace safety.

20 112. During Plaintiff's employment, he engaged in, but not limited to, the following
21 protected activities and as alleged herein: (1) Plaintiff submitted to his employer, including, but
22 not limited to, his supervisors and its Compliance Department, health and safety complaints
23 related to its defective ceilings; (2) Plaintiff submitted to government agencies health and safety
24 complaints related to Defendant's defective ceilings; and (3) Defendant's threatened Plaintiff's
25 employment with Defendant if he did not cease his whistleblowing, suspecting he would submit
26 such complaints to government agencies. The unsafe ceilings created unsafe conditions in
27 Plaintiff's workplace and for Defendant's patients.

1 113. Defendants violated § 6310 when it retaliated against Plaintiff by, but not limited to,
2 its actions and omissions as alleged herein for submitting these health and safety complaints.

3 114. As a proximate result of the wrongful conduct of Defendants, and each of them,
4 Plaintiff has suffered and continues to sustain substantial losses in earnings and other
5 employment benefits in an amount according to proof at the time of trial.

6 115. As a proximate result of the wrongful conduct of Defendants, and each of them,
7 Plaintiff has suffered humiliation, emotional distress, and mental pain and anguish, all to his
8 damage in an amount according to proof at the time of trial.

9 116. The actions of Defendants in retaliating against Plaintiff as alleged herein was
10 carried out with malice, willfulness and/or reckless indifference to the rights of Plaintiff, with
11 full knowledge of their unlawfulness, and with the intent to deprive Plaintiff of the rights
12 guaranteed to him under the law. Plaintiff is entitled to punitive damages for the purpose of
13 deterring such unlawful, malicious, oppressive and/or reckless conduct.

14 117. Plaintiff has also incurred and continues to incur attorneys' fees and legal expenses in
15 an amount according to proof at the time of trial.

17 **XIII. TENTH CAUSE OF ACTION**

18 **(Retaliation in Violation of Health & Safety Code Section 1278.5 (Plaintiff against All** 19 **Defendants))**

20 118. Plaintiff restates and incorporates by reference each and every allegation contained
21 in paragraphs 1 through 43, inclusive, as though fully set forth herein.

22 119. California Health and Safety Code § 1278.5 prohibits employers from retaliating
23 against any employee who complains about unsafe patient care or conditions to his employer or a
24 government agency.

25 120. During Plaintiff's employment, he engaged in, but not limited to, the following
26 protected activities: (1) Plaintiff submitted to his employer, including, but not limited to, his
27 supervisors and its Compliance Department, health and safety complaints related to its defective
28 ceilings; (2) Plaintiff submitted to government agencies health and safety complaints related to

1 Defendant's defective ceilings; and (3) Defendant's threatened Plaintiff's employment with
2 Defendant if he did not cease his whistleblowing, suspecting he would submit such complaints to
3 government agencies. The unsafe ceilings created unsafe conditions in Plaintiff's workplace and
4 for Defendant's patients.

5 121. Defendants violated § 1278.5 when it retaliated against Plaintiff by, but not limited
6 to, its actions and omissions as alleged herein for submitting these health and safety complaints.

7 122. As a proximate result of the wrongful conduct of Defendants, and each of them,
8 Plaintiff has suffered and continues to sustain substantial losses in earnings and other
9 employment benefits in an amount according to proof at the time of trial.

10 123. As a proximate result of the wrongful conduct of Defendants, and each of them,
11 Plaintiff has suffered humiliation, emotional distress, and mental pain and anguish, all to his
12 damage in an amount according to proof at the time of trial.

13 124. The actions of Defendants in retaliating against Plaintiff as alleged herein was
14 carried out with malice, willfulness and/or reckless indifference to the rights of Plaintiff, with
15 full knowledge of their unlawfulness, and with the intent to deprive Plaintiff of the rights
16 guaranteed to him under the law. Plaintiff is entitled to punitive damages for the purpose of
17 deterring such unlawful, malicious, oppressive and/or reckless conduct.

18 125. Plaintiff has also incurred and continues to incur attorneys' fees and legal expenses in
19 an amount according to proof at the time of trial.

20 **XIV.ELEVENTH CAUSE OF ACTION**

21 **(Failure to Indemnify- Violation of Labor Code § 2802) (Plaintiff against All Defendants)**

22 126. Plaintiff restates and incorporates by reference each and every allegation contained
23 in paragraphs 1 through 43, inclusive, as though fully set forth herein.

24 127. Labor Code Section 2802 requires an employer to indemnify its employees for all
25 necessary expenditures or losses incurred by the employee in direct consequence of the discharge
26 of his or her duties, or of his or her obedience to the directions of the employer.
27
28

1 128. Plaintiff is entitled to be reimbursed for, but not limited to, expenses incurred in
2 traveling to a temporary assignment and using his private cell phone for work purposes as
3 required by Defendants.

4 129. Plaintiff is entitled to an award of attorneys' fees pursuant to Labor Code Section
5 2802(c), costs, and expenses incurred in this action.

6 **XV. TWELFTH CAUSE OF ACTION**

7 **(Waiting Time Penalties) (Plaintiff against All Defendants)**

8
9 130. Plaintiff restates and incorporates by reference each and every allegation contained
10 in paragraphs 1 through 43, inclusive, as though fully set forth herein.

11 131. Labor Code §§ 201 and 202 require an employer to pay its employees all wages
12 due within the time specified by law. Labor Code § 203 provides that if an employer willfully
13 fails to pay such wages, the employer must continue to pay the subject employees' wages until
14 the back wages are paid in full or an action is commenced, up to a maximum of 30 days of
15 wages.

16 132. Plaintiff is entitled to all of his unpaid wages, but to date has not received such
17 compensation. More than 30 days have passed since Plaintiffs left Defendant's employ.

18 133. As a consequence of Defendant's willful failure to timely compensate Plaintiff for
19 all hours worked, Plaintiff is entitled to 30 days' wages pursuant to Labor Code § 203.

20 134. Plaintiff is entitled to an award of attorneys' fees, costs, and expenses incurred in this
21 action.

22 **XVI. THIRTEENTH CAUSE OF ACTION**

23 **(Unfair Business Practices - California Business & Professions Code § 17200, et. seq.)**

24 **(Plaintiff against All Defendants)**

25 135. Plaintiff restates and incorporates by reference each and every allegation
26 contained in paragraphs 1 through 43, inclusive, as though fully set forth herein.
27
28

136. Plaintiff is informed and believes that Defendants have intentionally and improperly violated the Labor Laws and Regulations as alleged herein, and have induced and directed its officers, managers, supervisors and/or other employees or agents to engage in violations including: (1) failing and refusing to indemnify Plaintiff as alleged herein; and (2) failing to timely compensate Plaintiff as alleged herein, which constitute unfair business practices in violation of California Business & Professions Code Sections 17200, *et seq.*

137. As a result of Defendant's unfair business practices, Defendants have reaped unfair benefits and illegal profits at the expense of Plaintiff and members of the public, including, but not limited to, under-reporting to federal and state authorities the wages earned by the Plaintiff and therefore under-paying state and federal taxes, employer matching funds, unemployment premiums, social security, Medicare and workers' compensation premiums.

138. Pursuant to California Business and Professions Code Section 17203, Plaintiff requests restitution and/or disgorgement of all wages wrongfully retained by Defendants in violation of Business and Professions Code sections 17000, *et seq.* and 17200, *et seq.*

I. PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays judgment as follows:

1. For compensatory and general damages in an amount according to proof;
2. For punitive damages;
3. For past and future lost income and benefits;
4. For prejudgment interest on all said amounts pursuant to California law;
5. For injunctive relief pursuant to California Government Code Section 12965(c)(3), including, without limitation, a requirement that Defendant Employer conduct training for all employees, supervisors, and management on the requirements of the Fair Employment and Housing Act ("FEHA"), the rights and remedies of those who allege a violation of the FEHA, and the employer's internal grievance procedures;
6. For costs of suit incurred herein;
7. For attorney's fees and costs pursuant to California law;

1 8. For such other and further relief that the Court may deem just and proper.
2
3

4 Dated: February 7, 2013

5 **THE MYERS LAW GROUP, A.P.C.**

6 By: *Ann Hendrix*

7 David P. Myers

8 Ann Hendrix

9 Vanessa Godinez-Elisarraraz

10 Attorneys for Plaintiff BRUCE B. CLEGG
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ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): David P. Myers (SBN 206137)/Ann Hendrix (SBN 258285) THE MYERS LAW GROUP, APC 9327 Fairway View Place, Ste. 100, Rancho Cucamonga, CA 91730 TELEPHONE NO.: 909-919-2027 FAX NO.: 888-375-2102		FOR COURT USE ONLY
ATTORNEY FOR (Name): Plaintiff Bruce B. Clegg		
SUPERIOR COURT OF CALIFORNIA, COUNTY OF Riverside STREET ADDRESS: 4050 Main Street MAILING ADDRESS: CITY AND ZIP CODE: Riverside, 92501 BRANCH NAME: Historic Courthouse		
CASE NAME: Bruce B. Clegg v. Kaiser Foundation Hospitals, a California Corporation; and DOES 1 through 10, inclusive		
CIVIL CASE COVER SHEET <input checked="" type="checkbox"/> Unlimited (Amount demanded exceeds \$25,000) <input type="checkbox"/> Limited (Amount demanded is \$25,000 or less)		Complex Case Designation <input type="checkbox"/> Counter <input type="checkbox"/> Joinder Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)
		CASE NUMBER: RIC 130 1616 JUDGE: DEPT:

Items 1–6 below must be completed (see instructions on page 2).

1. Check **one** box below for the case type that best describes this case:
- | | | |
|---|--|--|
| Auto Tort
<input type="checkbox"/> Auto (22)
<input type="checkbox"/> Uninsured motorist (46)
Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort
<input type="checkbox"/> Asbestos (04)
<input type="checkbox"/> Product liability (24)
<input type="checkbox"/> Medical malpractice (45)
<input type="checkbox"/> Other PI/PD/WD (23)
Non-PI/PD/WD (Other) Tort
<input type="checkbox"/> Business tort/unfair business practice (07)
<input type="checkbox"/> Civil rights (08)
<input type="checkbox"/> Defamation (13)
<input type="checkbox"/> Fraud (16)
<input type="checkbox"/> Intellectual property (19)
<input type="checkbox"/> Professional negligence (25)
<input type="checkbox"/> Other non-PI/PD/WD tort (35)
Employment
<input type="checkbox"/> Wrongful termination (36)
<input checked="" type="checkbox"/> Other employment (15) | Contract
<input type="checkbox"/> Breach of contract/warranty (06)
<input type="checkbox"/> Rule 3.740 collections (09)
<input type="checkbox"/> Other collections (09)
<input type="checkbox"/> Insurance coverage (18)
<input type="checkbox"/> Other contract (37)
Real Property
<input type="checkbox"/> Eminent domain/Inverse condemnation (14)
<input type="checkbox"/> Wrongful eviction (33)
<input type="checkbox"/> Other real property (26)
Unlawful Detainer
<input type="checkbox"/> Commercial (31)
<input type="checkbox"/> Residential (32)
<input type="checkbox"/> Drugs (38)
Judicial Review
<input type="checkbox"/> Asset forfeiture (05)
<input type="checkbox"/> Petition re: arbitration award (11)
<input type="checkbox"/> Writ of mandate (02)
<input type="checkbox"/> Other judicial review (39) | Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400–3.403)
<input type="checkbox"/> Antitrust/Trade regulation (03)
<input type="checkbox"/> Construction defect (10)
<input type="checkbox"/> Mass tort (40)
<input type="checkbox"/> Securities litigation (28)
<input type="checkbox"/> Environmental/Toxic tort (30)
<input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41)
Enforcement of Judgment
<input type="checkbox"/> Enforcement of judgment (20)
Miscellaneous Civil Complaint
<input type="checkbox"/> RICO (27)
<input type="checkbox"/> Other complaint (not specified above) (42)
Miscellaneous Civil Petition
<input type="checkbox"/> Partnership and corporate governance (21)
<input type="checkbox"/> Other petition (not specified above) (43) |
|---|--|--|
2. This case ☐ is ☒ is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:
- | | |
|--|--|
| a. <input type="checkbox"/> Large number of separately represented parties
b. <input type="checkbox"/> Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve
c. <input type="checkbox"/> Substantial amount of documentary evidence | d. <input type="checkbox"/> Large number of witnesses
e. <input type="checkbox"/> Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court
f. <input type="checkbox"/> Substantial postjudgment judicial supervision |
|--|--|
3. Remedies sought (check all that apply): a. ☒ monetary b. ☒ nonmonetary; declaratory or injunctive relief c. ☒ punitive
4. Number of causes of action (specify): **13**
5. This case ☐ is ☒ is not a class action suit.
6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)
- Date: 2/7/13

Ann Hendrix

(TYPE OR PRINT NAME)

(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

NOTICE

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed in sanctions).
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

SUPERIOR COURT OF CALIFORNIA, COUNTY OF RIVERSIDE
4050 Main Street
Riverside, CA 92501
www.riverside.courts.ca.gov

NOTICE OF ASSIGNMENT TO DEPARTMENT FOR CASE MANAGEMENT PURPOSES
AND CASE MANAGEMENT CONFERENCE (CRC 3.722)

CLEGG VS KAISER FOUNDATION HOSPITALS

CASE NO. RIC 1301616

This case is assigned to the Honorable Judge Ronald L Taylor
in Department 06 for case management purposes.
The Case Management Conference is scheduled for 08/07/13
at 8:30 in Department 06.

Case is Assigned to Department 12 for Law and Motion Purposes.

The plaintiff/cross-complainant shall serve a copy of this notice on
all defendants/cross-defendants who are named or added to the
complaint and file proof of service.

Any disqualification pursuant to CCP Section 170.6(a)(2) shall be
filed in accordance with that section.

Requests for accommodations can be made by submitting Judicial Council
form MC-410 no fewer than five court days before the hearing. See
CA Rules of Court, rule 1.100.

CERTIFICATE OF MAILING

I certify that I am currently employed by the Superior Court of
California, County of Riverside, and that I am not a party to this
action or proceeding. In my capacity, I am familiar with the practices
and procedures used in connection with the mailing of correspondence.
Such correspondence is deposited in the outgoing mail of the Superior
Court. Outgoing mail is delivered to and mailed by the United States
Postal Service, postage prepaid, the same day in the ordinary course
of business. I certify that I served a copy of the foregoing
notice on this date, by depositing said copy as stated above.

Dated: 02/07/13

Court Executive Officer/Clerk

By: 

ILZE SIRACUSA, Deputy Clerk

ac:cmcs;cmcb;cmch;cmct;cmcc
cmccb;cmch;cmct