



1 Arkady Itkin (SBN 253194)  
2 Law Office of A. Itkin  
3 100 Pine Street, Suite 1250  
4 San Francisco, CA 94111  
5 Telephone: (415) 640-6765  
6 Fax: (415) 508-3474  
7 arkady@arkadylaw.com

8 Attorney for Plaintiff  
9 BRANDON BOGUE

FILED  
ALAMEDA COUNTY

MAR 23 2016

CLERK OF THE SUPERIOR COURT

By [Signature] Deputy

10 SUPERIOR COURT OF CALIFORNIA  
11 COUNTY OF ALAMEDA - UNLIMITED CIVIL JURISDICTION

12 BRANDON BOGUE,

13 Plaintiff,

14 vs.

15 KAISER FOUNDATION HOSPITALS, and )  
16 DOES 1 through 100, inclusive, )

17 Defendants )

CASE NO.: RG16808824

COMPLAINT FOR DAMAGES AND  
REQUEST FOR JURY TRIAL

1. DISABILITY DISCRIMINATION IN VIOLATION OF FEHA
2. FAILURE TO ENGAGE IN INTERACTIVE PROCESS IN VIOLATION OF FEHA;
3. FAILURE TO PROVIDE REASONABLE ACCOMMODATIONS IN VIOLATION OF FEHA;
4. WRONGFUL TERMINATION IN VIOLATION OF PUBLIC POLICY

18 COMES NOW PLAINTIFF BOGUE, and complains and alleges as follows:

19 NATURE OF THE ACTION

20  
21 1. This is an individual action brought by an employee against his former Kaiser  
22 Foundation Hospitals. Plaintiff Bogue (hereinafter "Plaintiff") alleges violations of the Fair  
23 Employment and Housing Act (hereinafter "FEHA") based upon the Defendants' discrimination on  
24 the basis of his disability, refusal to engage in a prompt, good faith interactive process to provide  
25 accommodations for Plaintiff, and failure to accommodate Plaintiff as required by California Fair  
26  
27  
28

1 Employment and Housing Act.

2 **PARTIES**

3 2. Plaintiff is and at all material times alleged herein, was a resident of County of  
4 Alameda.

5 3. At all material times alleged herein, Plaintiff was employed by Defendant Kaiser  
6 Foundation Hospitals.

7 4. In addition to the Defendant named above, Plaintiff sues fictitiously Defendants  
8 DOES 1 through 100, inclusive, pursuant to Code of Civil Procedure §474, because their names,  
9 capacities, status, or facts showing them to liable are not presently known. Plaintiff will amend this  
10 complaint to show their true names and capacities, together with appropriate charging language,  
11 when such information has been ascertained.

12 **JURISDICTION AND VENUE**

13 5. The acts of Defendants that form the basis for the causes of action in this complaint  
14 occurred in the County of Alameda. Therefore, the San Francisco Venue is proper.

15 **EXHAUSTION OF ADMINISTRATIVE REMEDIES**

16 6. Plaintiff timely obtained a Right to Sue letter from the Department of Fair Employment  
17 and Housing (hereinafter "DFEH"), a true and correct copy of which is attached hereto as Exhibit A.

18  
19 **FACTUAL ALLEGATIONS**

20 7. Plaintiff started working for the Defendants around November 2004 as a Lift  
21 Technician. Plaintiff's most recent title was Patient Care Technician. Throughout his employment  
22 with the Defendants he competently performed his job duties.

23 8. On May 5, 2014, Plaintiff suffered an on the job injury to his shoulder while helping  
24 move a patient. Plaintiff subsequently filed a workers comp claim.

25 9. On May 6, 2014, Plaintiff saw Dr. Yue Feng who placed him off work during May 6-  
26 May 7, 2014, and on modified duties from May 8, 2014 until May 16, 2014. The Defendants,  
27 however, did not accommodate Plaintiff and sent him home to wait for recovery, even though  
28

1 Plaintiff informed the Defendants that he was able to work with some restrictions. Plaintiff was  
2 placed on modified duties by his doctor through August 19, 2014.

3 10. On June 5, 2014, Plaintiff had MRI which revealed "slap lesion tear" to his right  
4 shoulder. On August 8, 2014, Plaintiff underwent a rotator cuff surgery, and was placed off work by  
5 his doctor for recovery until October 19, 2014.

6 11. Plaintiff continuously updated the Defendants of his status by forwarding dropping  
7 his doctor's notes at the staffing department, at Kaiser Fremont.

8 12. Plaintiff was released to return to work as of July 17, 2015. After working for one  
9 week, Plaintiff realized that he still had pain in his shoulder from performing lift activities. His  
10 doctor then placed him on light duties. The Defendants did not provide any light duty to Plaintiff,  
11 despite Plaintiff's multiple requests for work shifts.

12 13. On June 15, 2015, Plaintiff moved and updated his address with Kaiser. From that  
13 point on, Plaintiff's workers comp documents, and Kaiser information was sent to his new address.

14 14. On December 17, 2015, Plaintiff was terminated for allegedly not providing updated  
15 medical documentation regarding his restrictions. As Plaintiff later found out, a number of warning  
16 letters requesting updated medical documentation was sent to his old address, even though the  
17 Defendants were well aware of, and have been sending correspondence to Plaintiff's new address for  
18 months at that time.

19 15. Plaintiff has and continues to suffer loss of wages and other economic and non  
20 economic damages.

21  
22 **FIRST CAUSE OF ACTION**  
23 **DISABILITY DISCRIMINATION IN VIOLATION OF FEHA**

24 16. Plaintiff hereby incorporates by reference paragraphs 1 through 15, as though fully set  
25 forth herein.

26 17. At all times material to this complaint, Plaintiff was a person with a disability within  
27 the meaning of the FEHA, including shoulder injury, which affected his ability to use his right arm  
28

1 and perform his job duties.

2 18. Defendant is an employer within the meaning of the FEHA.

3 19. On information and belief, Plaintiff alleges that, during times material here,  
4 Defendant violated the FEHA by treating him differently on the basis of his disability, and  
5 terminating Plaintiff at least in part because of his disability.

6 20. The effect of the above actions and omissions have been to deprive Plaintiff of equal  
7 employment opportunities and otherwise adversely affect his status as an employee because of his  
8 disability.

9 21. As a direct and further proximate result of the above violations of her rights under the  
10 FEHA, Plaintiff has suffered compensatory damages in the form of past and future wage loss, other  
11 pecuniary losses, emotional pain, loss of self-esteem, grief, stress, anxiety, stigma, humiliation,  
12 mental anguish, and loss of enjoyment of life in an amount to be proven at trial. The Defendants'  
13 acts were done with malice, fraud, and in conscious disregard for his disability rights, because the  
14 Defendants knew, at the time of terminating Plaintiff, that Plaintiff was awaiting AME, and it was  
15 contemplated that he would be returning to work, but terminated him anyway.

16 22. As a result of the Defendants' unlawful acts, Plaintiff is entitled to compensatory  
17 damages, equitable relief, punitive damages and attorney's fees and costs.

18 **SECOND CAUSE OF ACTION**

19 **FAILURE TO ENGAGE IN INTERACTIVE PROCESS IN VIOLATION OF FEHA**

20 23. Plaintiff hereby incorporates by reference paragraphs 1 through 22, as though fully set  
21 forth herein.

22 24. At all times material to this complaint, Plaintiff was a person with a disability within  
23 the meaning of the FEHA, including shoulder injury.

24 25. Defendant is an employer within the meaning of the FEHA.

25 26. On information and belief, Plaintiff alleges that, during times material here,  
26 Defendant violated the FEHA by failing to engage in a good faith, timely interactive process with  
27 Plaintiff and/or by causing a break-down in the interactive process by terminating his employment  
28

1 while he was waiting AME, being placed on modified duties and / or on medical leave, and planned  
2 to return to work.

3 27. The effect of the above actions and omissions have been to deprive Plaintiff of equal  
4 employment opportunities and otherwise adversely affect her status as an employee because of his  
5 disability, including terminating his employment.

6 28. As a direct and further proximate result of the above violations of his rights under the  
7 FEHA, Plaintiff has suffered compensatory damages in the form of past and future wage loss, other  
8 pecuniary losses, emotional pain, loss of self-esteem, grief, stress, anxiety, stigma, humiliation,  
9 mental anguish, and loss of enjoyment of life in an amount to be proven at trial. The Defendants'  
10 acts were done with malice, fraud, and in conscious disregard for his disability rights, because the  
11 Defendants knew, at the time of terminating Plaintiff, that he was entitled to reasonable  
12 accommodations but terminated him anyway.

13 29. As a result of Defendant's unlawful acts, Plaintiff is entitled to compensatory  
14 damages, equitable relief, punitive damages, and attorney's fees and costs.

15 **THIRD CAUSE OF ACTION**  
16 **FAILURE TO PROVIDE REASONABLE ACCOMMODATIONS OF FEHA**

17 30. Plaintiff hereby incorporates by reference paragraphs 1 through 29, as though fully set  
18 forth herein.

19 31. At all times material to this complaint, Plaintiff was a person with a disability within  
20 the meaning of the FEHA, including shoulder injury.

21 32. Defendant is an employer within the meaning of the FEHA.

22 33. On information and belief, Plaintiff alleges that, during times material here,  
23 the Defendant violated the FEHA by failing to provide reasonable accommodations to Plaintiff as  
24 required by FEHA, when they refused to accommodate his restrictions, place him on light duty, and  
25 terminated his employment.

26 34. The effect of the above actions and omissions have been to deprive Plaintiff of equal  
27 employment opportunities and otherwise adversely affect his status as an employee because of her  
28

1 disability.

2 35. As a direct and further proximate result of the above violations of her rights under the  
3 FEHA, Plaintiff has suffered compensatory damages in the form of past and future wage loss, other  
4 pecuniary losses, emotional pain, loss of self-esteem, grief, stress, anxiety, stigma, humiliation,  
5 mental anguish, and loss of enjoyment of life in an amount to be proven at trial. The Defendants' acts  
6 were done with malice, fraud, and in conscious disregard for his disability rights, because the  
7 Defendants knew, at the time of terminating Plaintiff, that he was entitled to reasonable  
8 accommodations at the time of his return from disability leave but terminated him anyway.

9 36. As a result of Defendant's unlawful acts, Plaintiff is entitled to compensatory  
10 damages, equitable relief, punitive damages, and attorney's fees and costs.

11  
12 **FOURTH CAUSE OF ACTION**  
13 **WRONGFUL TERMINATION IN VIOLATION OF PUBLIC POLICY**

14 37. Plaintiff hereby incorporates by reference paragraphs 1 through 36, as though fully set  
15 forth herein.

16 38. At all times material to this complaint, Plaintiff was a person with a disability within  
17 the meaning of the FEHA, including shoulder injury.

18 39. Defendant is an employer within the meaning of the FEHA.

19 40. On information and belief, Plaintiff alleges that, during times material here,  
20 the Defendant violated the FEHA and terminating his employment because of his disability.

21 41. It is a public policy of the State of California to discourage, prevent and remedy  
22 workplace discrimination. This policy is embodied in various laws and regulations, including FEHA.

23 42. Plaintiff's termination by the Defendants violated the above-stated public policy,  
24 entitling Plaintiff to compensatory damages, and equitable relief.

25 43. The Defendants' acts were done with malice, fraud, and in conscious disregard for his  
26 disability rights, because the Defendants knew, at the time of terminating Plaintiff, that he was  
27 entitled to reasonable accommodations but terminated him anyway. Therefore, Plaintiff is also  
28 entitled to punitive damages.

1  
2 **PRAYER FOR RELIEF**

3 **WHEREFORE**, Plaintiff prays for judgment against the Defendants as follows:

- 4 1. For compensatory damages;  
5 2. For punitive damages;  
6 3. For statutory attorneys' fees and costs of suit, for any applicable interest; and,  
7 4. For such other and further relief as is just and proper.

8  
9  
10 DATED: March 22, 2016

11 RESPECTFULLY SUBMITTED,

12  
13 BY: 

14 Arkady Itkin  
15 Attorney for Plaintiff  
16 BRANDON BOGUE

17 **DEMAND FOR JURY TRIAL**

18 Plaintiff hereby demands a trial for each and every claim for which she has a right to a jury  
19 trial.

20 DATED: March 22, 2016

21 RESPECTFULLY SUBMITTED,

22 BY: 

23 Arkady Itkin  
24 Attorney for Plaintiff  
25 BRANDON BOGUE  
26  
27  
28

# EXHIBIT A

Courthouse News Service





**DEPARTMENT OF FAIR EMPLOYMENT & HOUSING**

2218 Kausen Drive, Suite 100 | Elk Grove | CA | 95758  
800-884-1684 | TDD 800-700-2320  
www.dfeh.ca.gov | email: contact.center@dfeh.ca.gov

DIRECTOR KEVIN KISH

March 02, 2016

Brandon Bogue  
2942 Cheswycke Terrace  
Fremont, California 94536

**RE: Notice of Case Closure and Right to Sue**  
DFEH Matter Number: 42986-213649  
Right to Sue: Bogue / Kaiser Foundation Hospitals

Dear Brandon Bogue,

This letter informs you that the above-referenced complaint was filed with the Department of Fair Employment and Housing (DFEH) has been closed effective March 02, 2016 because an immediate Right to Sue notice was requested. DFEH will take no further action on the complaint.

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.

To obtain a federal Right to Sue notice, you must visit the U.S. Equal Employment Opportunity Commission (EEOC) to file a complaint within 30 days of receipt of this DFEH Notice of Case Closure or within 300 days of the alleged discriminatory act, whichever is earlier.

Sincerely,

Department of Fair Employment and Housing