

Attorneys for PLAINTIFF
JOSE ZUNIGA

FILED
Superior Court of California
County of Los Angeles

AUG 18 2014

Sherri R. Carter, Executive Officer/Clerk
By Cristina Grijalva Deputy
Cristina Grijalva

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

JOSE ZUNIGA,

PLAINTIFF,

vs.

KAISER FOUNDATION HOSPITALS, a corporation; KAISER FOUNDATION HOSPITALS, INC., a corporation; KAISER PERMANENTE VENTURES, LLC, a limited liability company; KAISER FOUNDATION HOSPITALS CALIFORNIA DIVISION SOUTH, a business entity unknown; and DOES 1 to 100, Inclusive.

DEFENDANTS.

Case No.:

BC 5 5 5 0 5 7

PLAINTIFF JOSE ZUNIGA'S
COMPLAINT FOR DAMAGES AND
RESTITUTION FOR:

1. DISPARATE TREATMENT
BASED ON DISABILITY AND/OR
PERCEIVED DISABILITY IN
VIOLATION OF THE FAIR
EMPLOYMENT ACT ("FEHA"),
GOVERNMENT CODE SECTION
12940, SUBDIVISION (a)
2. FAILURE TO PROVIDE
REASONABLE
ACCOMMODATION IN
VIOLATION OF THE FEHA,
GOVERNMENT CODE SECTION
12940, SUBDIVISION (m)
3. FAILURE TO ENGAGE IN THE
INTERACTIVE PROCESS IN
VIOLATION OF THE FEHA,
GOVERNMENT CODE SECTION
12940, SUBDIVISION (n)
4. RETALIATION IN VIOLATION
OF THE FEHA, GOVERNMENT
CODE "SECTION 12940,
SUBDIVISION (h)

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5. FAILURE TO PREVENT
DISCRIMINATION AND
RETALIATION IN VIOLATION
OF THE FEHA, GOVERNMENT
CODE SECTION 12940,
SUBDIVISION (k)

6. CFRA RIGHTS RETALIATION

7. WRONGFUL TERMINATION IN
VIOLATION OF PUBLIC POLICY

DEMAND FOR JURY TRIAL

NOW COMES PLAINTIFF JOSE ZUNIGA ("PLAINTIFF" or "Plaintiff") alleges and complains against KAISER FOUNDATION HOSPITALS; KAISER FOUNDATION HOSPITALS, INC.; KAISER PERMANENTE VENTURES, LLC; KAISER FOUNDATION HOSPITALS CALIFORNIA DIVISION SOUTH; and DOES 1 to 100 (hereinafter collectively referred to as "DEFENDANTS") as follows:

I. JURISDICTION AND VENUE

1. Jurisdiction and venue are proper in this Court because the claims alleged herein arose in Los Angeles County and the amount in controversy in this matter exceeds the sum of \$25,000.00, exclusive of interest, costs, and fees.

2. Plaintiff has met all of the jurisdictional requirements for proceeding with his claims under the Fair Employment and Housing Act ("FEHA") and California Family Rights Act ("CFRA") by timely filing administrative complaints against all DEFENDANTS with the Department of Fair Employment and Housing ("DFEH") on August 20, 2013 and receiving a Notice of Case Closure and a Right-to-Sue letter dated August 20, 2013. Attached as Exhibit 1 are true and correct copies of PLAINTIFF'S DFEH Administrative Charges and are herein incorporated by reference. Attached as Exhibit 2 are true and correct copies of Plaintiff's DFEH Right-to-Sue letters and are herein incorporated by reference. Plaintiff mailed DEFENDANTS a copy of these documents on October 18, 2013. Attached as Exhibit 3 are true and correct copies of Plaintiff's proof of mailing to DEFENDANTS and are herein incorporated by reference.

PRELIMINARY ALLEGATIONS

3. At all times herein mentioned, Plaintiff resided in the State of California. During

1 times relevant to this Complaint, Plaintiff worked for DEFENDANTS within Los Angeles County,
2 California, when the discrimination occurred. Plaintiff is no longer an employee of DEFENDANTS.
3 At all times during his employment, Plaintiff performed his job duties in a satisfactory manner and
4 was able to perform the essential functions of his job with reasonable accommodation of his
5 disability.

6 4. Plaintiff is informed and believes and thereon alleges that Defendant KAISER
7 FOUNDATION HOSPITALS is and at all times mentioned in this complaint was a California
8 corporation, a California Citizen, authorized to operate by the State of California and the United
9 States Government, and authorized and qualified to do business in the County of Los Angeles.
10 Defendant KAISER FOUNDATION HOSPITALS appeared as Plaintiff's employer on Plaintiff's
11 W-2. Defendant KAISER FOUNDATION HOSPITALS' primary business address is One Kaiser
12 Plaza, Oakland, CA 94612. Defendant employed Plaintiff in Los Angeles County when the
13 discrimination occurred, including at 1515 N. Vermont Avenue, Los Angeles, California 90027.
14 Defendant KAISER FOUNDATION HOSPITALS suffered and permitted Plaintiff to work as an
15 employee and controlled the hours, wages, and working conditions of his employment during all
16 relevant times to this lawsuit.

17 5. Plaintiff is informed and believes and thereon alleges that Defendant KAISER
18 FOUNDATION HOSPITALS, INC. is and at all times mentioned in this complaint was a California
19 corporation, a California Citizen, authorized to operate by the State of California and the United
20 States Government, and authorized and qualified to do business in the County of Los Angeles.
21 Defendant KAISER FOUNDATION HOSPITALS, INC. appeared as Plaintiff's employer on
22 Plaintiff's W-2. Defendant KAISER FOUNDATION HOSPITALS, INC.'s primary business
23 address is One Kaiser Plaza, Oakland, CA 94612. Defendant employed Plaintiff in Los Angeles
24 County when the discrimination occurred, including at 1515 N. Vermont Avenue, Los Angeles,
25 California 90027. Defendant KAISER FOUNDATION HOSPITALS, INC. suffered and permitted
26 Plaintiff to work as an employee and controlled the hours, wages, and working conditions of his
27 employment during all relevant times to this lawsuit.

28 6. Plaintiff is informed and believes and thereon alleges that Defendant KAISER

1 PERMANENTE VENTURES, LLC is and at all times mentioned in this complaint, was a Delaware
2 limited liability corporation, a California Citizen, authorized to operate by the State of California
3 and the United States Government, and authorized and qualified to do business in the County of Los
4 Angeles. Defendant KAISER PERMANENTE VENTURES, LLC's primary business address is
5 One Kaiser Plaza, Oakland, CA 94612. Defendant employed Plaintiff in Los Angeles County when
6 the discrimination occurred, including at 1515 N. Vermont Avenue, Los Angeles, California 90027.
7 Defendant KAISER PERMANENTE VENTURES, LLC suffered and permitted Plaintiff to work as
8 an employee and controlled the hours, wages, and working conditions of his employment during all
9 relevant times to this lawsuit.

10 7. Plaintiff is informed and believes and thereon alleges that Defendant KAISER
11 FOUNDATION HOSPITALS CALIFORNIA DIVISION SOUTH is and at all times mentioned in
12 this complaint was a California business entity unknown, a California Citizen, authorized to operate
13 by the State of California and the United States Government, and authorized and qualified to do
14 business in the County of Los Angeles. Defendant KAISER FOUNDATION HOSPITALS
15 CALIFORNIA DIVISION SOUTH appeared as Plaintiff's employer on Plaintiff's W-2. Defendant
16 KAISER FOUNDATION HOSPITALS CALIFORNIA DIVISION SOUTH's primary business
17 address is One Kaiser Plaza, Oakland, CA 94612. Defendant employed Plaintiff in Los Angeles
18 County when the discrimination occurred, including at 1515 N. Vermont Avenue, Los Angeles,
19 California 90027. Defendant KAISER FOUNDATION HOSPITALS CALIFORNIA DIVISION
20 SOUTH suffered and permitted Plaintiff to work as an employee and controlled the hours, wages,
21 and working conditions of his employment during all relevant times to this lawsuit.

22 8. Plaintiff is informed and believes and thereon alleges that Defendants DOES 1
23 through 50 are corporations, or are other business entities or organizations of a nature unknown to
24 Plaintiff.

25 9. Plaintiff is informed and believes and thereon alleges that Defendants DOES 51
26 through 100 are individuals unknown to Plaintiff. Each of the individual defendants is sued
27 individually and in his or her capacity as an agent, shareholder, owner, representative, manager,
28 supervisor, independent contractor and/or employee of each Defendant and had operational control

1 for Defendants.

2 10. Plaintiff is unaware of the true names of Defendants Does 1 through 100. Plaintiff
3 sues said defendants by said fictitious names, and will amend this complaint when the true names
4 and capacities are ascertained or when such facts pertaining to liability are ascertained, or as
5 permitted by law or by the Court. Plaintiff is informed and believes that each of the fictitiously
6 named defendants is in some manner responsible for the events and allegations set forth in this
7 complaint.

8 11. Plaintiff is informed, believes, and thereon alleges that at all relevant times, each
9 defendant was an employer, was the principal, agent, partner, joint venturer, officer, director,
10 controlling shareholder, subsidiary, affiliate, parent corporation, successor in interest and/or
11 predecessor in interest of some or all of the other Defendants, and was engaged with some or all of
12 the other defendants in a joint enterprise for profit, and bore such other relationships to some or all
13 of the other defendants so as to be liable for their conduct with respect to the matters alleged in this
14 complaint. Plaintiff is further informed and believes and thereon alleges that each defendant acted
15 pursuant to and within the scope of the relationships alleged above, and that at all relevant times,
16 each defendant knew or should have known about, authorized, ratified, adopted, approved,
17 controlled, aided and abetted the conduct of all other defendants. As used in this complaint,
18 "Defendant" means "Defendants and each of them," and refers to the Defendants named in the
19 particular cause of action in which the word appears and includes DEFENDANTS and Does 1
20 through 100.

21 12. At all times mentioned herein, each defendant was the co-conspirator, agent, servant,
22 employee, and/or joint venturer of each of the other defendants and was acting within the course and
23 scope of said conspiracy, agency, employment, and/or joint venture and with the permission and
24 consent of each of the other defendants.

25 13. Plaintiff makes the allegations in this complaint without any admission that, as to any
26 particular allegation, Plaintiff bears the burden of pleading, proving, or persuading and Plaintiff
27 reserves all of Plaintiff rights to plead in the alternative.

28 II.

1 **ADDITIONAL FACTS COMMON TO ALL CAUSES OF ACTION**

2 14. Plaintiff began his employment with DEFENDANTS in approximately 1998 as a
3 non-exempt employee with duties as a painter. Plaintiff worked on and off with DEFENDANTS
4 returning to the last period of continuous employment starting in approximately 2010 as a non-
5 exempt employee with duties as a painter. As a non-exempt employee, Plaintiff had the requisite
6 skill, experience, and job-related requirements of the positions in which he worked. Plaintiff
7 continued his employment with DEFENDANTS until DEFENDANTS wrongfully terminated his
8 employment on or about August 24, 2012. At all times during his employment, Plaintiff performed
9 his job duties in a satisfactory manner and was able to perform the essential functions of his job with
10 reasonable accommodation of his disability.

11 15. In mid-2012, Plaintiff was performing his job duties when he was exposed to
12 chemicals resulting in injuries to his face and eyes. Plaintiff reported his injuries to his
13 DEFENDANTS who transported him to the emergency room at Kaiser Permanente Los Angeles
14 Medical Center located in Los Angeles. Plaintiff was taken off work for a medical leave because of
15 his injuries and provided with work restrictions to be implemented upon his return to work.

16 16. Plaintiff provided his supervisor with the work restrictions. DEFENDANTS refused
17 to honor his work restrictions and informed him that he could not return to work with restrictions
18 and that Plaintiff had to be released without work restrictions before he could return to work.

19 17. Because Plaintiff needed to work and was told by DEFENDANTS that he could not
20 return to work unless he was released without work restrictions, Plaintiff returned to his medical
21 provider and asked that he be released to work without work restrictions.

22 18. Plaintiff continued to see his medical provider for his eye injury and continuing
23 limitation on major life activities, including but not limited to his ability to see. Plaintiff was able to
24 perform the essential job duties with reasonable accommodation of his disability.

25 19. In approximately mid-August 2012, Plaintiff requested a reasonable accommodation
26 of a schedule change allowing him to leave approximately thirty minutes early from his shift to
27 permit him to attend a medical appointment for his eye injuries. DEFENDANTS refused to grant
28 him the reasonable accommodation.

1 20. On approximately August 24, 2012, DEFENDANTS terminated Plaintiff for the
2 pretextual and false reason that they did not have work for him.

3 21. Plaintiff is informed and believes and thereon alleges that DEFENDANTS' adverse
4 employment decisions, including but not limited to the failure to accommodate and termination
5 decision, were made and/or ratified by DEFENDANTS' officers, directors, or managing agents.
6 DEFENDANTS and their officers, directors, or managing agents were conscious of PLAINTIFF'S
7 rights under the California Family Rights Act and Fair Employment and Housing Act to be free of
8 discrimination because of his disability/perceived disability, taking/requesting medical leave,
9 requesting of and need for reasonable accommodation; but disregarded those rights and acted with
10 the intent to cause PLAINTIFF injury by refusing to provide accommodation and terminating
11 PLAINTIFF'S employment. DEFENDANTS' disregard of PLAINTIFF'S statutory rights and offer
12 of a pretextual reason for his termination is in violation of statute, public policy, and would be
13 looked down on and despised by reasonable persons.

14 **FIRST CAUSE OF ACTION**

15 **DISABILITY DISCRIMINATION IN VIOLATION OF THE FEHA, GOVERNMENT**
16 **CODE SECTION 12940, SUBDIVISION (a)—DISPARATE TREATMENT BASED ON**
17 **DISABILITY AND/OR PERCEIVED DISABILITY**

18 **(AGAINST ALL DEFENDANTS)**

19 22. Plaintiff hereby incorporates by reference paragraphs 1-21 above, as if fully set
20 herein by reference;

21 23. The FEHA, codified in Government Code sections 12900 *et seq.* makes it unlawful
22 to for an employer to discriminate against an employee on the basis of the employee's disability or
23 perceived disability.

24 24. DEFENDANTS were employers bound by the FEHA.

25 25. Plaintiff was an employee of DEFENDANTS.

26 26. In mid-2012, Plaintiff was performing his job duties when he was exposed to
27 chemicals resulting in injuries to his eyes. Plaintiff reported his injuries to his DEFENDANTS who
28 transported him to the emergency room at Kaiser Permanente Los Angeles Medical Center located

1 in Los Angeles. Plaintiff was taken off work for a medical leave because of his injuries and
2 provided with work restrictions to be implemented upon his return to work.

3 27. Plaintiff provided his supervisor with the work restrictions. DEFENDANTS refused
4 to honor his work restrictions and informed him that he could not return to work with restrictions
5 and that Plaintiff had to be released without work restrictions before he could return to work.

6 28. Because Plaintiff needed to work and was told by DEFENDANTS that he could not
7 return to work unless he was released without work restrictions, Plaintiff returned to his medical
8 provider and asked that he be released to work without work restrictions.

9 29. Plaintiff continued to see his medical provider for his eye injury and continuing
10 limitation on major life activities, including but not limited to his ability to see. Plaintiff was able to
11 perform the essential job duties with reasonable accommodation of his disability.

12 30. In approximately mid-August 2012, Plaintiff requested a reasonable accommodation
13 of a schedule change allowing him to leave approximately thirty minutes early from his shift to
14 permit him to attend a medical appointment for his eye injuries. DEFENDANTS refused to grant
15 him the reasonable accommodation.

16 31. On approximately August 24, 2012, DEFENDANTS terminated Plaintiff for the
17 pretextual and false reason that they did not have work for him.

18 32. Plaintiff is informed and believes and based thereon alleges that his disability and/or
19 perceived disability was a substantial motivating reason for DEFENDANTS' adverse employment
20 decisions, including Defendant's refusals to accommodate Plaintiff and termination of his
21 employment, in violation of Government Code section 12940, subdivision (a).

22 33. Plaintiff is informed and believes and thereon alleges that DEFENDANTS' adverse
23 employment decisions, including but not limited to the failure to accommodate and termination
24 decision, were made and/or ratified by DEFENDANTS' officers, directors, or managing agents.
25 DEFENDANTS and their officers, directors, or managing agents were conscious of PLAINTIFF'S
26 rights under the California Family Rights Act and Fair Employment and Housing Act to be free of
27 discrimination because of his disability, taking of medical leave, requesting of and need for
28 reasonable accommodation; but disregarded those rights and acted with the intent to cause

1 PLAINTIFF injury by terminating PLAINTIFF'S employment. DEFENDANTS' disregard of
2 PLAINTIFF'S statutory rights and offer of a pretextual reason for his termination is in violation of
3 statute, public policy, and would be looked down on and despised by reasonable persons.

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

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

10 36. In doing the acts herein alleged, DEFENDANTS, and each of them, through acts or
11 inaction taken and approved of by their directors, officers, and managing agents, acted with
12 oppression, fraud, malice, and in conscious disregard of Plaintiff's rights and Plaintiff is therefore
13 entitled to punitive damages in an amount according to proof at the time of trial.

14 37. 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.

16 **SECOND CAUSE OF ACTION**

17 **FAILURE TO PROVIDE REASONABLE ACCOMMODATION IN VIOLATION OF THE**
18 **FEHA, GOVERNMENT CODE SECTION 12940, SUBDIVISION (m)**
19 **(AGAINST ALL DEFENDANTS)**

20 38. Plaintiff hereby incorporates by reference paragraphs 1-37, above, as if fully set
21 herein by reference;

22 39. The FEHA, codified in the Government Code section 12940, subdivision (m),
23 requires an employer to provide a disabled or an employee perceived to be disabled with a
24 reasonable accommodation for his or his disability and/or perceived disability.

25 40. DEFENDANTS were employers covered by the FEHA.

26 41. Plaintiff was an employee of DEFENDANTS.

27 42. In mid-2012, Plaintiff was performing his job duties when he was exposed to
28 chemicals resulting in injuries to his eyes. Plaintiff reported his injuries to his DEFENDANTS who

1 transported him to the emergency room at Kaiser Permanente Los Angeles Medical Center located
2 in Los Angeles. Plaintiff was taken off work for a medical leave because of his injuries and
3 provided with work restrictions to be implemented upon his return to work.

4 43. Plaintiff provided his supervisor with the work restrictions. DEFENDANTS refused
5 to honor his work restrictions and informed him that he could not return to work with restrictions
6 and that Plaintiff had to be released without work restrictions before he could return to work.

7 44. Because Plaintiff needed to work and was told by DEFENDANTS that he could not
8 return to work unless he was released without work restrictions, Plaintiff returned to his medical
9 provider and asked that he be released to work without work restrictions.

10 45. Plaintiff continued to see his medical provider for his eye injury and continuing
11 limitation on major life activities, including but not limited to his ability to see. Plaintiff was able to
12 perform the essential job duties with reasonable accommodation of his disability.

13 46. In approximately mid-August 2012, Plaintiff requested a reasonable accommodation
14 of a schedule change allowing him to leave approximately thirty minutes early from his shift to
15 permit him to attend a medical appointment for his eye injuries. DEFENDANTS refused to grant
16 him the reasonable accommodation.

17 47. On approximately August 24, 2012, DEFENDANTS terminated Plaintiff for the
18 pretextual and false reason that they did not have work for him.

19 48. Plaintiff is informed and believes and thereon alleges that DEFENDANTS' adverse
20 employment decisions, including but not limited to the failure to accommodate and termination
21 decision, were made and/or ratified by DEFENDANTS' officers, directors, or managing agents.
22 DEFENDANTS and their officers, directors, or managing agents were conscious of PLAINTIFF'S
23 rights under the California Family Rights Act and Fair Employment and Housing Act to be free of
24 discrimination because of his disability, taking of medical leave, requesting of and need for
25 reasonable accommodation; but disregarded those rights and acted with the intent to cause
26 PLAINTIFF injury by terminating PLAINTIFF'S employment. DEFENDANTS' disregard of
27 PLAINTIFF'S statutory rights and offer of a pretextual reason for his termination is in violation of
28 statute, public policy, and would be looked down on and despised by reasonable persons.

1 49. As a proximate result of the DEFENDANTS' refusal to accommodate Plaintiff and
2 termination of his employment rather than providing him with reasonable accommodation; Plaintiff
3 has suffered and continues to sustain substantial losses in earnings and other employment benefits in
4 an amount according to proof at the time of trial.

5 50. As a proximate result of the DEFENDANTS' refusal to accommodate Plaintiff and
6 termination of his employment rather than providing him with reasonable accommodation; Plaintiff
7 has suffered humiliation, emotional distress, and mental pain and anguish, all to his damage in an
8 amount according to proof at the time of trial.

9 51. In doing the acts herein alleged, DEFENDANTS, and each of them, through acts or
10 inaction taken and approved of by their directors, officers, and managing agents, acted with
11 oppression, fraud, malice, and in conscious disregard of Plaintiff's rights and Plaintiff is therefore
12 entitled to punitive damages in an amount according to proof at the time of trial.

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

15 **THIRD CAUSE OF ACTION**

16 **FAILURE TO ENGAGE IN THE INTERACTIVE PROCESS IN VIOLATION OF THE**
17 **FEHA, GOVERNMENT CODE SECTION 12940, SUBDIVISION (n)**
18 **(AGAINST ALL DEFENDANTS)**

19 53. Plaintiff hereby incorporates by reference paragraphs 1-53 above, as if fully set
20 herein by reference;

21 54. The FEHA, codified in the Government Code section 12940, subdivision (n),
22 requires an employer to engage in an interactive process in a timely and good faith manner to
23 determine an effective reasonable accommodation.

24 55. DEFENDANTS were employers covered by the FEHA.

25 56. Plaintiff was an employee of DEFENDANTS.

26 57. In mid-2012, Plaintiff was performing his job duties when he was exposed to
27 chemicals resulting in injuries to his eyes. Plaintiff reported his injuries to his DEFENDANTS who
28 transported him to the emergency room at Kaiser Permanente Los Angeles Medical Center located

1 in Los Angeles. Plaintiff was taken off work for a medical leave because of his injuries and
2 provided with work restrictions to be implemented upon his return to work.

3 58. Plaintiff provided his supervisor with the work restrictions. Plaintiff was willing to
4 participate in an interactive process to determine whether reasonable accommodation could be made
5 so that he would be able to perform the essential job requirements, but DEFENDANTS refused to
6 honor his work restrictions without engaging in a good-faith interactive process and informed him
7 that he could not return to work with restrictions and that Plaintiff had to be released without work
8 restrictions before he could return to work.

9 59. Because Plaintiff needed to work and was told by DEFENDANTS that he could not
10 return to work unless he was released without work restrictions, Plaintiff returned to his medical
11 provider and asked that he be released to work without work restrictions.

12 60. Plaintiff continued to see his medical provider for his eye injury and continuing
13 limitation on major life activities, including but not limited to his ability to see. Plaintiff was able to
14 perform the essential job duties with reasonable accommodation of his disability.

15 61. In approximately mid-August 2012, Plaintiff requested a reasonable accommodation
16 of a schedule change allowing him to leave approximately thirty minutes early from his shift to
17 permit him to attend a medical appointment for his eye injuries. Plaintiff was willing to participate
18 in an interactive process to determine whether reasonable accommodation could be made so that he
19 would be able to perform the essential job requirements, but DEFENDANTS refused to grant him
20 the reasonable accommodation without engaging in a good-faith interactive process.

21 62. On approximately August 24, 2012, DEFENDANTS terminated Plaintiff for the
22 pretextual and false reason that they did not have work for him.

23 63. Plaintiff is informed and believes and thereon alleges that DEFENDANTS' adverse
24 employment decisions, including but not limited to the failure to accommodate and termination
25 decision, were made and/or ratified by DEFENDANTS' officers, directors, or managing agents.
26 DEFENDANTS and their officers, directors, or managing agents were conscious of PLAINTIFF'S
27 rights under the California Family Rights Act and Fair Employment and Housing Act to be free of
28 discrimination because of his disability, taking of medical leave, requesting of and need for

1 reasonable accommodation; but disregarded those rights and acted with the intent to cause
2 PLAINTIFF injury by terminating PLAINTIFF'S employment. DEFENDANTS' disregard of
3 PLAINTIFF'S statutory rights and offer of a pretextual reason for his termination is in violation of
4 statute, public policy, and would be looked down on and despised by reasonable persons.

5 64. As a proximate result of the DEFENDANTS' failure to engage in an interactive
6 process; Plaintiff has suffered and continues to sustain substantial losses in earnings and other
7 employment benefits in an amount according to proof at the time of trial.

8 65. As a proximate result of the DEFENDANTS' failure to engage in an interactive
9 process; Plaintiff has suffered humiliation, emotional distress, and mental pain and anguish, all to
10 his damage in an amount according to proof at the time of trial.

11 66. In doing the acts herein alleged, DEFENDANTS, and each of them, through acts or
12 inaction taken and approved of by their directors, officers, and managing agents, acted with
13 oppression, fraud, malice, and in conscious disregard of Plaintiff's rights and Plaintiff is therefore
14 entitled to punitive damages in an amount according to proof at the time of trial.

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

17 FOURTH CAUSE OF ACTION

18 RETALIATION IN VIOLATION OF THE FEHA

19 (AGAINST KAISER FOUNDATION HOSPITALS AND DOES 1-100, INCLUSIVE)

20 68. Plaintiff hereby incorporates by reference paragraphs 1-67 above, as if fully set
21 herein by reference;

22 69. The California Fair Employment and Housing Act, codified in Government Code
23 sections 12900 *et seq.* ("FEHA"), makes it unlawful to for an employer to retaliate against an
24 individual with a disability who opposes any discriminatory practice, including employees who ask
25 for reasonable accommodations.

26 70. DEFENDANTS were employers bound by the FEHA.

27 71. Plaintiff was an employee of DEFENDANTS.

28 72. In mid-2012, Plaintiff was performing his job duties when he was exposed to

1 chemicals resulting in injuries to his eyes. Plaintiff reported his injuries to his DEFENDANTS who
2 transported him to the emergency room at Kaiser Permanente Los Angeles Medical Center located
3 in Los Angeles. Plaintiff was taken off work for a medical leave because of his injuries and
4 provided with work restrictions to be implemented upon his return to work.

5 73. Plaintiff provided his supervisor with the work restrictions. DEFENDANTS refused
6 to honor his work restrictions and informed him that he could not return to work with restrictions
7 and that Plaintiff had to be released without work restrictions before he could return to work.

8 74. Because Plaintiff needed to work and was told by DEFENDANTS that he could not
9 return to work unless he was released without work restrictions, Plaintiff returned to his medical
10 provider and asked that he be released to work without work restrictions.

11 75. Plaintiff continued to see his medical provider for his eye injury and continuing
12 limitation on major life activities, including but not limited to his ability to see. Plaintiff was able to
13 perform the essential job duties with reasonable accommodation of his disability.

14 76. In approximately mid-August 2012, Plaintiff requested a reasonable accommodation
15 of a schedule change allowing him to leave approximately thirty minutes early from his shift to
16 permit him to attend a medical appointment for his eye injuries. DEFENDANTS refused to grant
17 him the reasonable accommodation.

18 77. On approximately August 24, 2012, DEFENDANTS terminated Plaintiff for the
19 pretextual and false reason that they did not have work for him.

20 78. Plaintiff is informed and believes and based thereon alleges that his request for
21 reasonable accommodation was a substantial motivating reason for DEFENDANTS' adverse
22 employment decisions, including Defendant's refusals to accommodate Plaintiff and termination of
23 his employment, in violation of Government Code section 12940, subdivision (h).

24 79. Plaintiff is informed and believes and thereon alleges that DEFENDANTS' adverse
25 employment decisions, including but not limited to the failure to accommodate and termination
26 decision, were made and/or ratified by DEFENDANTS' officers, directors, or managing agents.
27 DEFENDANTS and their officers, directors, or managing agents were conscious of PLAINTIFF'S
28 rights under the California Family Rights Act and Fair Employment and Housing Act to be free of

1 discrimination because of his disability, taking of medical leave, requesting of and need for
2 reasonable accommodation; but disregarded those rights and acted with the intent to cause
3 PLAINTIFF injury by terminating PLAINTIFF'S employment. DEFENDANTS' disregard of
4 PLAINTIFF'S statutory rights and offer of a pretextual reason for his termination is in violation of
5 statute, public policy, and would be looked down on and despised by reasonable persons.

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

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

12 82. In doing the acts herein alleged, DEFENDANTS, and each of them, through acts or
13 inaction taken and approved of by their directors, officers, and managing agents, acted with
14 oppression, fraud, malice, and in conscious disregard of Plaintiff's rights and Plaintiff is therefore
15 entitled to punitive damages in an amount according to proof at the time of trial.

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

18 FIFTH CAUSE OF ACTION

19 **FAILURE TO PREVENT DISCRIMINATION AND RETALIATION IN VIOLATION OF** 20 **THE FEHA, GOVERNMENT CODE SECTION 12940, SUBDIVISION (k)** 21 **(AGAINST ALL DEFENDANTS)**

22 84. Plaintiff hereby incorporates by reference paragraphs 1-83 above, as if fully set
23 herein by reference;

24 85. The FEHA, codified in Government Code sections 12900 *et seq.*, provides that it is
25 an unlawful employment practice "to fail to take all reasonable steps necessary to prevent
26 discrimination and harassment from occurring" (Gov. Code § 12940, subd. (k)) which includes
27 retaliation.

28 86. DEFENDANTS were employers bound by the FEHA.

1 87. Plaintiff was an employee of DEFENDANTS.

2 88. Plaintiff is informed and believes and based thereon alleges that his disability and/or
3 perceived disability was a substantial motivating reason for DEFENDANTS' adverse employment
4 decisions, including Defendant's refusals to accommodate Plaintiff and termination of his
5 employment, in violation of Government Code section 12940, subdivision (a).

6 89. DEFENDANTS failed to take all reasonable steps to prevent the discrimination and
7 retaliation, including but not limited to education on reasonable accommodation/interactive process
8 and entitlement to reasonable accommodation/interactive process and prevention of disability
9 discrimination and policies providing reasonable accommodation/interactive process and preventing
10 disability discrimination.

11 90. Plaintiff is informed and believes and thereon alleges that DEFENDANTS' failure to
12 take all reasonable steps to prevent discrimination and retaliation against Plaintiff was caused by
13 actions or inactions made and/or ratified by DEFENDANTS' officers, directors, or managing
14 agents. DEFENDANTS and their officers, directors, or managing agents were conscious of
15 PLAINTIFF'S rights under the California Family Rights Act and Fair Employment and Housing Act
16 to be free of discrimination and retaliation because of his disability, taking of medical leave,
17 requesting of and need for reasonable accommodation; but disregarded those rights and failed to
18 take all reasonable steps to prevent the discrimination and retaliation. DEFENDANTS' disregard of
19 PLAINTIFF'S statutory rights and offer of a pretextual reason for his termination is in violation of
20 statute, public policy, and would be looked down on and despised by reasonable persons

21 91. 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 92. As a proximate result of the wrongful conduct of DEFENDANTS, and each of them,
25 PLAINTIFF has suffered humiliation, emotional distress, and mental pain and anguish, all to his
26 damage in an amount according to proof at the time of trial.

27 93. In doing the acts herein alleged, DEFENDANTS, and each of them, through acts or
28 inaction taken and approved of by their directors, officers, and managing agents, acted with

1 oppression, fraud, malice, and in conscious disregard of PLAINTIFF'S rights and PLAINTIFF is
2 therefore entitled to punitive damages in an amount according to proof at the time of trial.

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

5 **SIXTH CAUSE OF ACTION**

6 **CFRA RIGHTS RETALIATION**

7 **(AGAINST KAISER FOUNDATION HOSPITALS, ANTOINETTE HIGGINS, AND DOES**
8 **1-100, INCLUSIVE)**

9 95. PLAINTIFF hereby incorporates by reference paragraphs 1-94, as if fully set herein
10 by reference;

11 96. The CFRA, codified in the Government Code section 12945.1, *et seq.*, requires an
12 employer to provide employees with all rights afforded to them pursuant to the CFRA and prohibits
13 retaliating against an employee for exercising any rights under the CFRA.

14 97. Plaintiff was an employee of DEFENDANTS.

15 98. DEFENDANTS employed 50 or more employees within 75 miles of Plaintiff's
16 workplace.

17 99. At the time Plaintiff requested for and/or began leave, he had more than 12 months
18 of service with DEFENDANTS and had worked more than 1,250 hours in the previous 12 months.

19 100. At the time Plaintiff requested for and/or began leave, he had not taken more than 12
20 weeks of family care or medical leave in the prior 12 month period.

21 101. In mid-2012, Plaintiff was performing his job duties when he was exposed to
22 chemicals resulting in injuries to his eyes. Plaintiff reported his injuries to his DEFENDANTS who
23 transported him to the emergency room at Kaiser Permanente Los Angeles Medical Center located
24 in Los Angeles. Plaintiff was taken off work for a medical leave because of his injuries and
25 provided with work restrictions to be implemented upon his return to work.

26 102. Plaintiff provided DEFENDANTS with notice of his need to time off for his injury.
27 Plaintiff took time off for his injury.

28 103. Plaintiff also provided his supervisor with the work restrictions. DEFENDANTS

1 refused to honor his work restrictions and informed him that he could not return to work with
2 restrictions and that Plaintiff had to be released without work restrictions before he could return to
3 work.

4 104. Because Plaintiff needed to work and was told by DEFENDANTS that he could not
5 return to work unless he was released without work restrictions, Plaintiff returned to his medical
6 provider and asked that he be released to work without work restrictions.

7 105. Plaintiff continued to see his medical provider for his eye injury and continuing
8 limitation on major life activities, including but not limited to his ability to see. Plaintiff was able to
9 perform the essential job duties with reasonable accommodation of his disability.

10 106. In approximately mid-August 2012, Plaintiff requested a reasonable accommodation
11 of a schedule change allowing him to leave approximately thirty minutes early from his shift to
12 permit him to attend a medical appointment for his eye injuries. DEFENDANTS refused to grant
13 him the reasonable accommodation.

14 107. On approximately August 24, 2012, DEFENDANTS terminated Plaintiff for the
15 pretextual and false reason that they did not have work for him.

16 108. Plaintiff is informed and believes and based thereon alleges that his request for and
17 taking of leave for his serious health condition was a substantial motivating reason for
18 DEFENDANTS' adverse employment decisions, including Defendant's refusals to accommodate
19 Plaintiff and termination of his employment, in violation of Government Code section 12945.2.

20 109. Plaintiff is informed and believes and thereon alleges that DEFENDANTS' adverse
21 employment decisions, including but not limited to the failure to accommodate and termination
22 decision, were made and/or ratified by DEFENDANTS' officers, directors, or managing agents.
23 DEFENDANTS and their officers, directors, or managing agents were conscious of PLAINTIFF'S
24 rights under the California Family Rights Act and Fair Employment and Housing Act to be free of
25 discrimination because of his requesting of and need for medical leave; but disregarded those rights
26 and acted with the intent to cause PLAINTIFF injury by terminating PLAINTIFF'S employment.
27 DEFENDANTS' disregard of PLAINTIFF'S statutory rights and offer of a pretextual reason for his
28 termination is in violation of statute, public policy, and would be looked down on and despised by

1 reasonable persons.

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

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

8 112. In doing the acts herein alleged, DEFENDANTS, and each of them, through acts or
9 inaction taken and approved of by their directors, officers, and managing agents, acted with
10 oppression, fraud, malice, and in conscious disregard of Plaintiff's rights and Plaintiff is therefore
11 entitled to punitive damages in an amount according to proof at the time of trial.

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

14 **SEVENTH CAUSE OF ACTION**

15 **WRONGFUL TERMINATION IN VIOLATION OF PUBLIC POLICY**
16 **(AGAINST ALL DEFENDANTS)**

17 114. PLAINTIFF hereby incorporates by reference paragraphs 1-113 above, as if fully set
18 herein by reference;

19 115. The CFRA sets forth the public policy that it is unlawful for an employer to
20 terminate or discriminate against an employee for exercising his or her right to medical leave.

21 116. The FEHA, codified in Government Code sections 12900 *et seq.*, makes it unlawful
22 to for an employer to terminate or discriminate against an employee because they have a disability
23 or perceived disability or otherwise exercise their rights under the FEHA.

24 117. The FEHA, codified in Government Code sections 12900 *et seq.* ("FEHA"), makes it
25 unlawful to for an employer to retaliate against an individual with a disability who opposes any
26 discriminatory practice, including employees who ask for reasonable accommodations.

27 118. DEFENDANTS discriminated against Plaintiff on grounds that violate California's
28 public policies prohibiting discrimination and retaliation against employees for exercising his or her

1 right to medical leave under the California Family Rights Act; discrimination against employees
2 because of their disability and/or perceived disability; and/or retaliation against employees who
3 request a reasonable accommodation.

4 119. Plaintiff was an employee of DEFENDANTS.

5 120. DEFENDANTS employed 50 or more employees within 75 miles of Plaintiff's
6 workplace.

7 121. At the time Plaintiff requested for and/or began leave, he had more than 12 months
8 of service with DEFENDANTS and had worked more than 1,250 hours in the previous 12 months.

9 122. At the time Plaintiff requested for and/or began leave, he had not taken more than 12
10 weeks of family care or medical leave in the prior 12 month period.

11 123. In mid-2012, Plaintiff was performing his job duties when he was exposed to
12 chemicals resulting in injuries to his eyes. Plaintiff reported his injuries to his DEFENDANTS who
13 transported him to the emergency room at Kaiser Permanente Los Angeles Medical Center located
14 in Los Angeles. Plaintiff was taken off work for a medical leave because of his injuries and
15 provided with work restrictions to be implemented upon his return to work.

16 124. Plaintiff provided DEFENDANTS with notice of his need to time off for his injury.
17 Plaintiff took time off for his injury.

18 125. Plaintiff also provided his supervisor with the work restrictions. DEFENDANTS
19 refused to honor his work restrictions and informed him that he could not return to work with
20 restrictions and that Plaintiff had to be released without work restrictions before he could return to
21 work.

22 126. Because Plaintiff needed to work and was told by DEFENDANTS that he could not
23 return to work unless he was released without work restrictions, Plaintiff returned to his medical
24 provider and asked that he be released to work without work restrictions.

25 127. Plaintiff continued to see his medical provider for his eye injury and continuing
26 limitation on major life activities, including but not limited to his ability to see. Plaintiff was able to
27 perform the essential job duties with reasonable accommodation of his disability.

28 128. In approximately mid-August 2012, Plaintiff requested a reasonable accommodation

1 of a schedule change allowing him to leave approximately thirty minutes early from his shift to
2 permit him to attend a medical appointment for his eye injuries. DEFENDANTS refused to grant
3 him the reasonable accommodation.

4 129. On approximately August 24, 2012, DEFENDANTS terminated Plaintiff for the
5 pretextual and false reason that they did not have work for him.

6 130. Plaintiff is informed and believes and based thereon alleges that his
7 disability/perceived disability, request for reasonable accommodation, and request for and taking of
8 leave for his serious health condition was a substantial motivating reason for DEFENDANTS'
9 adverse employment decisions, including Defendant's refusals to accommodate Plaintiff and
10 termination of his employment, in violation of Government Code section 12945.2.

11 131. Plaintiff is informed and believes and thereon alleges that DEFENDANTS' adverse
12 employment decisions, including but not limited to the failure to accommodate and termination
13 decision, were made and/or ratified by DEFENDANTS' officers, directors, or managing agents.
14 DEFENDANTS and their officers, directors, or managing agents were conscious of PLAINTIFF'S
15 rights under the California Family Rights Act and Fair Employment and Housing Act to be free of
16 discrimination because of his disability/perceived disability, request for reasonable accommodation,
17 and request for and taking of medical leave; but disregarded those rights and acted with the intent to
18 cause PLAINTIFF injury by terminating PLAINTIFF'S employment. DEFENDANTS' disregard of
19 PLAINTIFF'S statutory rights and offer of a pretextual reason for his termination is in violation of
20 statute, public policy, and would be looked down on and despised by reasonable persons.

21 132. 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 employment
23 benefits in an amount according to proof at the time of trial.

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

27 134. In doing the acts herein alleged, DEFENDANTS, and each of them, through acts or
28 inaction taken and approved of by their directors, officers, and managing agents, acted with

1 oppression, fraud, malice, and in conscious disregard of the rights of Plaintiff, and Plaintiff is
2 therefore entitled to punitive damages according to proof at the time of trial.

3 135. Plaintiff has also incurred and continues to incur costs in an amount according to
4 proof at the time of trial.

5 **WHEREFORE, PLAINTIFF prays that Judgment be entered in his favor and against**
6 **DEFENDANTS, and each of them, as follows:**

7
8 **ON THE FIRST, SECOND, THIRD, FOURTH AND FIFTH CAUSES OF ACTION:**

9 1. That the Defendants to be found to have failed to engage in an interactive process,
10 failed to provide reasonable accommodation, discriminated against Plaintiff based on his disability
11 and/or perceived disability, retaliated against him for requesting reasonable accommodation, and/or
12 failed to prevent discrimination and retaliation all in violation of the FEHA.

13 2. For such general, special, and compensatory damages as may be appropriate,
14 including all damages alleged above.

15 3. For past and future lost income and benefits.

16 4. For equitable relief, including reinstatement, if deemed appropriate.

17 5. For emotional distress damages.

18 6. For pre-judgment interest.

19 7. For costs of suit and attorneys' fees on pursuant to the FEHA.

20 8. For punitive damages.

21 9. For prejudgment and post-judgment interest as available by law; and

22 10. For such other relief as the Court deems just and proper.

23 **ON THE SIXTH CAUSE OF ACTION:**

24 1. That the Defendants to be found to have wrongfully deprived Plaintiff of leave or
25 retaliated against Plaintiff for requesting or taking leave and made other adverse employment
26 decisions against Plaintiff in violation of the CFRA

27 2. For such general, special, and compensatory damages as may be appropriate,
28 including all damages alleged above.

3. For past and future lost income and benefits.
4. For equitable relief, including reinstatement, if deemed appropriate.
5. For emotional distress damages.
6. For pre-judgment interest.
7. For costs of suit and attorneys' fees on pursuant to the CFRA.
8. For punitive damages.
9. For prejudgment and post-judgment interest as available by law; and
10. For such other relief as the Court deems just and proper.

ON THE SEVENTH CAUSE OF ACTION:

1. That the Defendants be found to have wrongfully terminated Plaintiff's employment in violation of public policy.

2. For such general, special, compensatory and liquidated damages as may be appropriate, including all damages alleged above.

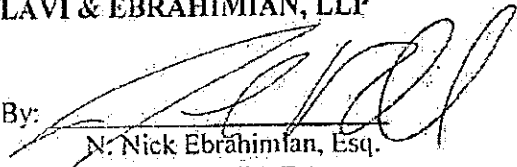
3. For past and future lost income and benefits.
4. For equitable relief, including reinstatement, if deemed appropriate.
5. For emotional distress damages.
6. For costs of suit.
7. For punitive damages.
8. For prejudgment and post-judgment interest as available by law; and
9. For such other relief as the Court deems just and proper.

Dated: August 18, 2014

Respectfully submitted,

LAVI & EBRAHIMIAN, LLP

By:


N. Nick Ebrahimian, Esq.
Jordan D. Bello, Esq.
Attorneys for PLAINTIFF
JOSE ZUNIGA

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DEMAND FOR TRIAL BY JURY

PLAINTIFF JOSE ZUNIGA hereby demands trial by jury.

Dated: August 18, 2014

Respectfully submitted,

LAVI & EBRAHIMIAN, LLP

By:

N. Nick Ebrahimián, Esq.
Jordan D. Bello, Esq.
Attorneys for PLAINTIFF
JOSE ZUNIGA