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20 UNITED STATES DISTRICT COURT
21 SOUTHERN DISTRICT OF CALIFORNIA

22 NICHOLAS YPHANTIDES, an
23 Individual,

24 Plaintiff,

25 v.

26 COUNTY OF SAN DIEGO, a Public
27 Entity; and
28 DOES 1 – 10, Inclusive,

Defendants.

Case No.:

**COMPLAINT FOR DAMAGES AND
INJUNCTIVE RELIEF**

DEMAND FOR JURY TRIAL

1 Plaintiff, Nicholas Yphantides, M.D. (“Plaintiff”), by and through his
2 attorneys, brings this action on behalf of himself against Defendant County of San
3 Diego (“Defendant”), and DOES 1 through 10, inclusive. Plaintiff makes the
4 following allegations upon information and belief (except those allegations as to the
5 Plaintiff or his attorneys, which are based on personal knowledge), based upon an
6 investigation that is reasonable under the circumstances, which allegations are likely
7 to have evidentiary support after a reasonable opportunity for further investigation
8 and/or discovery.

9 NATURE OF THE ACTION

10 1. In early 2020, thousands of miles from San Diego, sinister storm clouds
11 began looming over a black swan event - the likes of which the world had never seen.
12 Death and economic ruin made its way towards San Diego as a mysterious and highly
13 contagious infectious disease spread across the globe like wildfire. Uncertainty, fear,
14 and panic took hold as scientists and medical professionals worked around the clock
15 to diagnose, trace, isolate, treat, and eventually, develop a vaccine to stop the disease
16 we now know as COVID-19. This case is about a devoted medical professional, Dr.
17 Nicholas Yphantides (hereinafter “Dr. Nick”), who, like thousands of doctors, first
18 responders, and public servants, placed the health and wellbeing of others before his
19 own in order to save lives during the pandemic. As the County of San Diego’s
20 (“County”) Chief Medical Officer, a position Dr. Nick held for over 11 years, Dr.
21 Nick was one of the County’s first public faces responding to the COVID-19
22 pandemic, frequently appearing at televised press conferences to inform, guide,
23 educate, calm, and empathize with San Diegans. But Dr. Nick’s all-consuming fight
24 against the fear, confusion, and death sweeping the world came at great personal cost.

25 2. In October 2020, Dr. Nick hit a metaphysical “wall.” The long hours,
26 twinned with the misery and death encountered every day, caused him to suffer from
27 insomnia, major depression, and crippling anxiety (Dr. Nick’s “Disability”), forcing
28 Dr. Nick to take a four-week medical leave of absence. But when Dr. Nick returned

1 to work, members of the County's leadership team (who were well aware of the details
2 of Dr. Nick's Disability, including Dr. Nick's brief suicidal ideation) viewed Dr. Nick
3 as damaged goods who had cracked under the pressure. Despite a career-worth of
4 exemplary performance reviews, the County suddenly began to unfairly scrutinize Dr.
5 Nick's performance, vainly looking for manufactured proof that he was no longer any
6 value to the County. Not finding any legitimate proof, the County soon forced Dr.
7 Nick to take another leave of absence, vaguely claiming there were concerns about
8 his "mental well-being." And when Dr. Nick again sought to return to work after
9 another seven weeks of leave, the County unlawfully demanded he undergo an
10 invasive Fitness for Duty ("FFD") exam that violated the County's own policies.
11 Based on information and belief, the FFD exam was a sham as the County had already
12 decided to terminate Dr. Nick's employment. And indeed, before completing the FFD
13 exam, the County carried out its predetermined plan, unlawfully terminating Dr. Nick
14 without providing any reason or justification for doing so.

15 3. At worst, the County punished Dr. Nick because of the social, political,
16 and professional stigma associated with Dr. Nick's mental Disability. At best, the
17 County punished Dr. Nick for conduct it perceived as being directly caused by his
18 Disability. From the moment the County learned of the details of Dr. Nick's
19 Disability, it viewed Dr. Nick and every action he took as if he were a broken
20 employee. Instead of building a bridge to enable Dr. Nick to cross the river of mental
21 and physical fragility to be successful in the workplace, the County burned that bridge
22 and made sure the "broken" employee could not successfully cross back into its
23 workplace.

24 4. To redress the harms suffered, Plaintiff brings claims for: (1) unlawful
25 medical and psychological inquiry and psychological and medical examination in
26 violation of California Government Code ("Cal. Gov't Code") §12940(f); (2)
27 unlawful medical and psychological inquiry and psychological and medical
28 examination in violation of the Rehabilitation Act of 1972, 42 U.S.C.

1 §12112(d)(1)(4); (3) disability discrimination, perceived disability discrimination in
2 violation of Cal. Gov't Code §12940(a); (4) failure to provide reasonable
3 accommodation in violation of Cal. Gov't Code §12940(m); (5) failure to engage in
4 the interactive process in violation of Cal. Gov't Code §12940(n); (6) retaliation for
5 requesting disability accommodations in violation of Cal. Gov't Code §12940(m)(2);
6 (7) failure to prevent discrimination and retaliation in violation of Cal. Gov't Code
7 §12940(k); (8) interference with the right to medical leave in violation of Cal. Gov't
8 Code §12945.2, *et seq.*; (8) retaliation for taking medical leave in violation of Cal.
9 Gov't Code §12945.2, *et seq.*; (9) interference with the right to medical leave in
10 violation of 29 U.S.C. §2601, *et seq.*; and (10) retaliation for taking medical leave in
11 violation of 29 U.S.C. §2601, *et seq.*

12 JURISDICTION AND VENUE

13 5. This Court has original subject matter jurisdiction under 28 U.S.C. §1331
14 because Plaintiff asserts causes of action for interference and retaliation under the
15 FMLA, 29 U.S.C. §2601, *et seq.*, and unlawful medical and/or psychological inquiry
16 and examination in violation of the ADA, 42 U.S.C. §12112(d)(1)(4). This Court has
17 supplemental jurisdiction over Plaintiff's claims arising under state substantive law,
18 California's FEHA, Gov't Code §12900, *et seq.*, because they arise from the same
19 common nucleus of operative facts as Plaintiff's federal claims. 28 U.S.C. 1367(a).

20 6. The Southern District of California has personal jurisdiction over the
21 parties in this matter. Plaintiff is, and at all relevant times was, a citizen of San Diego,
22 California. Defendant is a duly organized government entity, existing under the laws
23 of the State of California. During the relevant period, the alleged unlawful acts
24 occurred in or around the County of San Diego, State of California.

25 7. Venue is proper in this district under 28 U.S.C. §1391 because Plaintiff
26 and Defendant are, and at all relevant times have been, subject to the personal
27 jurisdiction of this Court, and because a substantial part of the events or omissions
28 giving rise to Plaintiff's claims occurred in this district.

THE PARTIES

1
2 8. Plaintiff is an individual residing in San Diego County, California. At all
3 relevant times mentioned in this Complaint, Plaintiff was a member of a protected
4 class of persons with a mental disability within the meaning of the FEHA, Gov't Code
5 §12900, *et seq.* Plaintiff is also informed and believes, and thereon alleges, that he
6 was employed by Defendant for at least 1,250 hours of service during the 12-month
7 period just prior to taking medical leave and worked at a worksite at which Defendant
8 employed more than 50 employees. In addition, Defendant represented to Plaintiff
9 that he was eligible for job-protected leave. Therefore, Plaintiff is, and at all relevant
10 times was, an "eligible employee" within the meaning of the FMLA, 29 U.S.C. §2601,
11 *et seq.*, and the CFRA, Gov't Code §12945.2, *et seq.*

12 9. Defendant County of San Diego is a public entity headquartered at 1600
13 Pacific Highway, San Diego, California 92101. Plaintiff is informed and believes, and
14 thereon alleges, that at all relevant times mentioned herein, Defendant engaged in
15 commerce or in an industry or activity affecting commerce and employed 50 or more
16 employees. Therefore, Defendant is, and at all relevant times mentioned herein was,
17 an "employer" within the meaning of the FMLA, 29 U.S.C. §2601, *et seq.*, the CFRA,
18 Gov't Code §12945.2, *et seq.*, and the FEHA, Gov't Code §12900, *et seq.*

19 10. In doing the acts alleged herein, Defendant's employees, subcontractors,
20 and agents acted within the course and scope of their employment and agency.
21 Defendant engaged in the acts alleged herein and/or condoned, permitted, authorized,
22 and/or ratified the conduct of its employees, subcontractors, and agents, and is
23 vicariously liable for the wrongful conduct of its employees, subcontractors, and
24 agents alleged herein.

25 11. Plaintiff does not know the true names and capacities of Defendants
26 DOES 1 through 10, inclusive, and therefore sues them by these fictitious names.
27 Plaintiff will amend this Complaint to include their names and capacities once they
28 are known. Plaintiff is informed and believes, and on that basis alleges, that each of

1 the Defendants designated as a DOE is legally responsible in some manner for the
2 occurrences alleged in this Complaint, and unlawfully caused the injuries and
3 damages to Plaintiff as alleged in this Complaint.

4 **EXHAUSTION OF REMEDIES**

5 12. On July 7, 2021, Plaintiff filed a charge of discrimination with the
6 California Department of Fair Employment and Housing (“DFEH”). That same day,
7 the DFEH closed Plaintiff’s case and issued a Right-To-Sue Notice. Therefore,
8 Plaintiff has exhausted his administrative remedies. True and correct copies of the
9 charge of discrimination and Right-To-Sue Notice are attached hereto as **Exhibit 1**.

10 **FACTS COMMON TO ALL CAUSES OF ACTION**

11 **Plaintiff Nicholas Yphantides, M.D.**

12 13. Dr. Nick was born in New Jersey and spent a portion of the early part of
13 his life in Greece, where his father was from, before moving back to New Jersey and
14 graduating from high school at the age of 16. Thereafter, Dr. Nick graduated from
15 Azusa Pacific University, *Magna Cum Laude*, in May of 1986 and began pursuing a
16 master’s degree in Public Health with a focus on Epidemiology (the study of the
17 distribution and determinants of health-related states and events in specified
18 populations) at Loma Linda University School of Public Health. Dr. Nick, however,
19 soon took a break from his master’s program when he was accepted into the
20 University of California, San Diego School of Medicine in the fall of 1987 as the
21 youngest member of his class. An honors student who earned multiple awards and
22 accolades, Dr. Nick graduated medical school in 1992 and completed a one-year
23 internship in the Family Practice Progrâm of the prestigious Ventura County Medical
24 Center in 1993.

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1 14. In completing his internship, Dr. Nick realized that his passion was in
2 population health, rather than individual patient care. Dr. Nick preferred to treat the
3 community as his “patient,” and to that end, he returned to Loma Linda University
4 and completed his master’s degree as a Dean’s Fellow in the spring of 1994. Indeed,
5 Dr. Nick had always had a passion for serving the public, and particularly those
6 communities that were poor and marginalized. In college, Dr. Nick led student groups
7 to orphanages in Baja Mexico with food from the University cafeteria. In medical
8 school, Dr. Nick took an elective 5th year and traveled the United States and abroad,
9 working under mentors who were clinical “servant leaders” caring for those who
10 needed it most, including the homeless in Washington DC, the inner city of East-
11 Chicago, Central America, Eastern Europe, South Africa, and Southeast Asia.

12 15. Dr. Nick then returned to San Diego and was hired as the Medical
13 Director of the Escondido Community Clinic, a Federally Qualified Health Center
14 (“FQHC”) that received government funding to provide primary care services to the
15 underserved on a sliding fee scale based on their ability to pay. Under Dr. Nick’s
16 leadership, and in response to community need due to the large number of uninsured
17 citizens, the clinic expanded from one to nine locations and was renamed
18 Neighborhood Health Care. In further response to the community’s need, Dr. Nick
19 also started a first-of-its-kind FCHC inpatient hospital program providing inpatient
20 care at Palomar Medical Center for those who did not have their own primary care
21 physicians.

22 16. In 1996, Dr. Nick became the County’s youngest publicly elected official
23 when he was elected to the Board of Directors of the Palomar Health System. Dr.
24 Nick served on the Board from 1996 to 2000 and spent his final two years as Chairman
25 of the Board. Thereafter, Dr. Nick did a variety of consulting jobs and was recruited
26 by the County’s Board of Supervisors to lead its Childhood Obesity Initiative, for
27 which Dr. Nick earned the County’s Public Health Champion Award in 2005.

1 **Dr. Nick Is Hired by the County of San Diego as Its First Chief Medical Officer**
2 **and Expertly Leads the County Through Various Health Crises**

3 17. In 2009, the County's then Director and Deputy Chief Administrative
4 Officer, Nick Macchione, created a new Chief Medical Officer ("CMO") position
5 within the County's Health and Human Services Agency ("HHS"), which provides
6 physical, behavioral, public health, and social service programs to the citizens of San
7 Diego County. The new CMO would be responsible for integrating the access,
8 delivery, and awareness of the County's clinical and medical services to those citizens
9 and families who needed it most, with the goal of improving the health of the overall
10 community through preventative and continuing medical care. Dr. Nick was well-
11 qualified for the position and, on April 1, 2009, was hired as the County's first CMO.

12 18. Within days of joining the County, San Diego became ground-zero for
13 the H1N1 virus ("swine flu") pandemic that gripped the globe and caused school and
14 business closures, travel restrictions, and economic downturn. The virus, which
15 spread through coughs and sneezes and by handling infected objects and then the
16 touching of eyes, nose, and mouth, required Dr. Nick to quickly develop and
17 implement a County-wide strategic response to stop the spread of the outbreak. Due
18 to the County's actions, the outbreak was contained within the year.

19 19. In 2016, the County increased Dr. Nick's job duties to include oversight
20 of its Emergency Medical Services ("EMS") system, which is responsible for the
21 emergency medical response and care of seriously ill or injured citizens. In fact, based
22 on Dr. Nick's exceptional performance (reflected in every annual performance review
23 he received), the County continually increased Dr. Nick's job duties and relied on Dr.
24 Nick whenever it faced high-profile crises. For example, between 2017 and 2020, Dr.
25 Nick led the County's rapid response strategies to the Hepatitis A outbreak, annual
26 influenza events, meningococcal outbreak at San Diego State University, and the
27 migrant caravans of asylum-seekers from Central America. As a result of these crises,
28 Dr. Nick and his EMS team completely revamped and rewrote the County's All-

1 Hazard Health Services Capacity Management Plan which, unbeknownst to Dr. Nick
2 at the time, would become the blueprint for the County's response in 2020 to the
3 largest pandemic the world had ever seen – COVID-19.

4 **The COVID-19 Pandemic Hits and Dr. Nick Leads the County's Response**

5 20. On January 5, 2020, Dr. Nick received a panicked phone call from a
6 colleague, a recognized expert on emergency response and novel infectious agents
7 and pandemics, who had just heard about a mysterious new infection in China that
8 was causing a peculiar respiratory disease. Dr. Nick and his staff immediately began
9 tracking the growing problem and gleaning every piece of information that they could
10 find. On January 31, 2020, when Dr. Nick was informed that evacuees from China
11 were being brought to Marine Corps Air Station Miramar, he led the early
12 mobilization of the regional health care delivery system in anticipation of their arrival
13 – an effort that gave San Diego a jump start in its preparation for the inevitable local
14 transmission.

15 21. As he had done when the County faced prior public health crises, Dr.
16 Nick helped coordinate the response, assuming many roles and responsibilities in the
17 early days of the pandemic including: participation on the County's Emergency
18 Operation Center's policy group and designing the Incident Command Structure;
19 serving as part of the County's "public face" to local media; strategizing the proactive
20 timing of the County's Public Health Emergency Declaration, social distancing
21 measures, school and business shutdowns, and mask mandates; overseeing the EMS
22 Capacity Plan, including updates of the County's daily data dashboards and
23 coordinating the Medical Care Services team directly involved in the pandemic
24 response; leading coordination efforts with the San Diego Blood Bank and the
25 American Red Cross to set up a convalescent plasma program, including a
26 coordinated way of recruiting confirmed positive cases from the Public Health Lab;
27 and creating, coordinating, and hosting a weekly town hall forum for clinicians
28 throughout San Diego and Imperial Counties.

1 **To Help Save Lives, Dr. Nick Works to the Point of Mental and**
2 **Physical Exhaustion and Requires a Medical Leave of Absence**

3 22. From January 31, 2020, through April 2020, Dr. Nick focused on issues
4 relating to COVID-19, literally around the clock. But soon, he had to also attend to
5 his regular CMO responsibilities as major issues, like Medi-Cal reform, hiring and
6 training of key new staff, and unexpected challenges in the realm of technology and
7 regional politics, demanded his constant vigilance. With the COVID-19 pandemic
8 raging, over half of Dr. Nick's team were pulled into the County's Emergency
9 Operations Center and Dr. Nick had very few people to back him up. He repeatedly
10 asked for resources and support that the County did not and/or could not provide.
11 Despite the strenuous demands, Dr. Nick continued to excel at his job, with his
12 performance being rated as exemplary in his annual performance review on
13 September 11, 2020.

14 23. Unfortunately, in late August 2020, Dr. Nick started to feel the physical,
15 emotional, and mental toll from the stress and endless hours of work. Indeed, Dr. Nick
16 had not had one day off since the pandemic began. His symptoms included anxiety,
17 insomnia, exhaustion, irritability, lethargy, loss of pleasure in things that he normally
18 enjoyed, and depression. Dr. Nick understood the signs and, thus, on September 26,
19 2020, he called his personal physician for treatment, who immediately started Dr.
20 Nick on anti-depressant medication. Over the course of the next two weeks, Dr.
21 Nick's symptoms worsened despite his doctor increasing his medication dosage.
22 Concerned for Dr. Nick's mental health and well-being, his physician recommended
23 he take a leave of absence from work.

24 24. As such, on October 11, 2020, Dr. Nick informed several colleagues,
25 including acting HHSA Director Dean Arabatzis and Deputy Chief Administrative
26 Officer Nick Macchione, that he needed to take a short medical leave, describing his
27 symptoms in detail. Over the next two days, Dr. Nick and his physician completed
28 and submitted the required FMLA/CFRA forms and Dr. Nick notified his staff of his

1 forthcoming leave. On October 14, 2020, for the first time in his life, Dr. Nick went
2 on FMLA/CFRA medical leave with hopes of a quick recovery.

3 25. During Dr. Nick's medical leave, his mental state grew worse before it
4 got better. But with regular medical and psychiatric treatment, including anti-
5 depressant, anti-anxiety, and insomnia medication, and some much-needed rest, Dr.
6 Nick slowly began to improve. Dr. Nick shared the details of these dark times,
7 including his brief suicidal ideation, with some of his County colleagues including
8 Mr. Arabatzis and acting Chief Operations Officer, Andy Pease.

9 **Dr. Nick Resumes His Role as the CMO Until the County Blindsides Him**
10 **with Pretextual Adverse Employment Action**

11 26. By mid-November 2020, although Dr. Nick did not feel 100% ready to
12 return to work, urgent issues relating to the COVID-19 pandemic, including fears of
13 new strains, summoned Dr. Nick back to his post. On November 17, 2020, the County
14 welcomed Dr. Nick back to work without requesting medical clearance, engaging in
15 an interactive process, or any discussion about his well-being or possible need for
16 disability accommodations.

17 27. Unfortunately, the County's internal perception of Dr. Nick dramatically
18 changed. Throughout the next few months, the County, including Mr. Arabatzis, Mr.
19 Macchione, and Chief Administrative Officer Helen Robbins-Meyer, unfairly
20 scrutinized Dr. Nick's performance, looking for proof that he was damaged goods.
21 The County went from praising Dr. Nick for being an exceptional performer just prior
22 to his medical leave, to perceiving Dr. Nick as mentally unfit and unable to perform
23 his job duties after he returned from leave. Rather than engage in an interactive
24 process with Dr. Nick to determine whether, in fact, his mental Disability was
25 affecting his ability to perform his job and whether he needed a disability
26 accommodation such as additional medical leave, the County began taking pretextual
27 steps to unlawfully eliminate him.
28

1 28. Early on Wednesday, January 13, 2021, the County suddenly demanded
2 Dr. Nick participate in a “human resources” meeting with Mr. Arabatzis, Agency
3 Human Resources Director, Kim Evers, and Mr. Pease. During the meeting, Mr.
4 Arabatzis, who indicated he had previously met with Mr. Macchione and Ms.
5 Robbins-Meyer regarding Dr. Nick, repeatedly expressed concern about Dr. Nick’s
6 “mental health” and demanded that Dr. Nick either take administrative leave or he
7 would face termination. The County’s leadership team perceived Dr. Nick as having
8 a mental disability that impaired his ability to perform his job duties and threatened
9 termination based on those perceived impairments despite never having engaged in
10 the interactive process, requesting medical certification, or requesting a FFD exam.
11 In other words, the County had no objective evidence that Dr. Nick was mentally
12 unable to perform his job; it just subjectively assumed so. Faced with a “Hobson’s
13 choice,” Dr. Nick reluctantly agreed to the compulsory leave of absence, but
14 demanded it be protected under the FMLA/CFRA to the maximum extent possible.

15 29. Yet, inconsistent with the County’s policy regarding compulsory leaves
16 that required it to make an objective finding that Dr. Nick was “mentally or physically
17 *incapacitated* to perform assigned duties,” the County allowed Dr. Nick to fulfill high
18 level job duties for the next two full days for over twelve hours each day. Such tasks
19 included, among other things, leading an online after-hours clinical town hall on
20 COVID-19 with several hundred local physicians, attending an Executive Board
21 meeting for San Diego Health Connect, participating in the County’s monthly
22 executive leadership meeting, and meeting with newly elected County Supervisor
23 Nora Vargas. Dr. Nick then wrote his outgoing message regarding taking some time
24 off “for unexpected reasons,” sent several final wrap-up emails and, at 9:00 p.m., on
25 Thursday, January 14, 2021, the County locked Dr. Nick’s email account, and he
26 began his County-imposed leave.

1 30. Unfortunately, the County never intended on having Dr. Nick return, as
2 the County perceived him as “broken” and mentally unfit. Indeed, evidencing that the
3 decision to terminate Dr. Nick’s employment had already been made on January 21,
4 2021, the County removed Dr. Nick from the County’s executive leadership
5 organizational chart.

6 **The County Mandates an Unlawful Fitness for Duty Exam**
7 **and Wrongfully Terminates Dr. Nick’s Employment**

8 31. Unfortunately, the stress of the County’s unlawful actions exacerbated
9 Dr. Nick’s Disability and he slipped back into a state of heightened anxiety and
10 emotional distress. Over the next seven weeks, Dr. Nick continued his medical and
11 psychiatric treatment and, by March 2021, felt ready and able to return to work, which
12 his doctors agreed with. As such, on March 2, 2021, Dr. Nick sent an email to Mr.
13 Macchione, Mr. Arabatzis, and Ms. Evers informing them as follows: “I just wanted
14 to let you know that I will be returning from FMLA on Monday morning, March 8,
15 2021. I plan on resuming my normal duties as the Chief Medical Officer.”

16 32. However, in violation of its own policies, on March 5, 2021, without
17 prior notification, the County communicated to Dr. Nick that he was required to stay
18 on a continued forced administrative leave for 20 working days and to attend a FFD
19 exam on March 9, 2021 to “review . . . your ability to perform the essential functions
20 of your position.” In doing so, the County wholly bypassed conducting any interactive
21 discussion with Dr. Nick and/or his medical providers regarding his current ability to
22 perform his essential job functions. As of March 5, 2021, there was no evidence that
23 Dr. Nick posed a danger to himself or other employees due to his Disability or that he
24 was mentally or physically unable or incapacitated to perform his assigned duties. The
25 County’s notice of the mandatory FFD exam did not even provide Dr. Nick with the
26 minimum five-day advance notification required by its own policy. In other words, as
27 of that date, there was no objective evidence that the FFD exam was either job related
28 or consistent with business necessity as required by the FEHA, Gov’t Code §12940(f).

1 33. This is because the FFD exam was a sham. As stated above, based on
2 information and belief, the County had already made the decision to terminate Dr.
3 Nick's employment because of his Disability and use of protected medical leave.

4 34. Despite the County's mandate that Dr. Nick attend the violative FFD
5 exam, Dr. Nick appeared for the FFD exam, which was ultimately scheduled for
6 March 16, 2021. While a misunderstanding about the recordability of the FFD exam
7 prevented it from being completed, the examiner admitted that she was strictly there
8 to evaluate Dr. Nick's ability to resume his job duties based on the depression and
9 suicidal ideation he suffered back in October 2020. The exam appeared to be neither
10 job related, consistent with the current business needs of the County, nor based on
11 any new or current facts supporting the need for such an exam -- rather, it was geared
12 solely at making an unlawful inquiry regarding the nature and severity of Dr. Nick's
13 mental health back in the fall/winter of 2020.

14 35. Notwithstanding, Dr. Nick remained willing to complete the FFD exam
15 on any terms required by the County (even if such terms violated the County's own
16 policies) if it meant keeping his job. Moreover, on March 15, 2021 (the day before
17 the initial exam), Dr. Nick's psychiatrist issued a letter that said, in his medical
18 opinion, Dr. Nick had stably returned to his baseline mood and that he could not detect
19 a clear psychiatric syndrome or disorder that would impair Dr. Nick's ability to
20 perform his job.

21 36. Instead of engaging in the interactive process with Dr. Nick or
22 proceeding with the FFD exam, on March 22, 2021, the County informed Dr. Nick
23 that his employment with the County was terminated without providing its reasons
24 for doing so. After nearly 12 years of faithful service to the County and its citizens,
25 and with the threat of new, virulent, and deadly COVID-19 variants appearing in San
26 Diego, the County callously discarded Dr. Nick because of his Disability and need for
27 medical leave, and its unlawful and unjustified perception that his Disability made
28 him unfit to perform his job.

1 37. Because of the County's conduct, Dr. Nick has suffered lost wages and
2 benefits, and he continues to suffer other damages. Dr. Nick has also suffered
3 emotional distress from the County's conduct. He is a victim of the County's unlawful
4 practices and therefore brings this action to recover damages, costs, expenses,
5 restitution, penalties, liquidated damages, and injunctive and declaratory relief.

6 **COUNT I**

7 **Unlawful Medical and Psychological Inquiry and**
8 **Psychological and Medical Examination in Violation of**
9 **California Government Code §12940(f)**

10 38. Plaintiff realleges and incorporates herein by reference each allegation
11 in the preceding and subsequent paragraphs.

12 39. It is an unlawful employment practice for:

13 [A]ny employer ... to require any medical or psychological examination
14 of an employee, to make any medical or psychological inquiry of an
15 employee, or to make any inquiry whether an employee has a mental
16 disability, physical disability, or medical condition, or to make any
17 inquiry regarding the nature or severity of a physical disability, mental
18 disability, or medical condition.

19 Gov't Code §12940(f)(1). A FFD exam is allowed only where the employer
20 can show the exam is both "job related *and* consistent with a business necessity."
21 Gov't Code §12940(f)(2) (emphasis added); *see also* 2 C.C.R. §11071(d)(1) (an
22 employer may only "make disability-related inquires, including fitness for duty
23 exams, and require medical examinations of employees so long as the inquiries are
24 both job related and consistent with business necessity"). There is only a "business
25 necessity" for a FFD exam if "the need for the disability inquiry or medical
26 examination is *vital* to the business." 2 C.C.R. §11065(b). To be "job related," the
27 exam must also be "tailored to assess the employee's ability to carry out the essential
28 functions of the job or to determine whether the employee poses a danger to the
employee or others due to a disability." 2 C.C.R. §11065(k).

1 40. Here, Defendant made an unlawful inquiry of whether Plaintiff had a
2 mental disability, including the nature and severity of the same. Defendant also
3 mandated Plaintiff attend an unlawful medical and/or psychological examination. At
4 the time the FFD exam was mandated by Defendant, it could not show that the FFD
5 exam was both job related and consistent with a business necessity. Indeed, even *after*
6 Defendant forced Plaintiff onto a compulsory leave of absence, which Defendant's
7 policies required a showing of mental "incapacity," Defendant inconsistently required
8 Plaintiff to continue performing high level job duties for two twelve-hour workdays,
9 which Plaintiff performed exemplarily. Moreover, just prior to mandating the FFD
10 exam, Plaintiff had taken about a seven week leave of absence during which time
11 Plaintiff was able to reset to his baseline mood (which was corroborated by Plaintiff's
12 psychiatrist). In short, the County had no objective basis as of March 15, 2021, that
13 the FFD exam was vital to the business or that Plaintiff posed a danger to himself or
14 others. In addition, based on the examiner's statements, the FFD exam was not
15 tailored to assess Plaintiff's ability to carry out the essential functions of the job or
16 whether he was currently a danger to himself or others.

17 41. As such, Defendant's inquiry into the nature and severity of Plaintiff's
18 mental disability and demanding Plaintiff undergo a FFD exam violated the FEHA,
19 Gov't Code §12940(f) and 2 C.C.R. §11071(d)(1).

20 42. As a proximate result of Defendant's wrongful conduct, Plaintiff has
21 suffered, and continues to suffer, substantial losses in earnings, earning capacity, and
22 other benefits of employment, all in an amount to be determined according to proof
23 at the time of trial, plus interest thereon.

24 43. As a further proximate result of Defendant's wrongful conduct, Plaintiff
25 has suffered, and continues to suffer, humiliation, embarrassment, emotional distress,
26 and mental anguish, all in an amount to be determined according to proof at the time
27 of trial.
28

1 44. Plaintiff is also entitled to costs and reasonable attorneys' fees pursuant
2 to Government Code §12965(b) because of Defendant's wrongful conduct.

3 **COUNT II**

4 **Unlawful Medical and Psychological Inquiry and**
5 **Psychological and Medical Examination in Violation of**
6 **the Rehabilitation Act of 1972, 42 U.S.C. §12112(d)(1)(4)**

7 45. Plaintiff realleges and incorporates herein by reference each allegation
8 in the preceding and subsequent paragraphs.

9 46. The ADA prohibits employers from "require[ing] a medical
10 examination ... [or] mak[ing] inquiries of an employee as to whether such employee
11 is an individual with a disability ... unless such examination or inquiry is shown to be
12 job-related and consistent with business necessity." 42 U.S.C. §12112(d)(4)(a)
13 (ADA); *see also* 29 C.F.R. §1630.14(c) (regulations to implementing ADA). The
14 business necessity standard "is quite high, and it is not to be confused with mere
15 expediency." *Cripe v. City of San Jose*, 261 F.3d 877, 890 (9th Cir. 2001); *Wright v.*
16 *Ill. Dep't of Children & Family Servs.*, 798 F.3d 513, 523 (7th Cir. 2015) (same). The
17 Ninth Circuit has cautioned courts to "guard against the potential for employer abuse
18 of such exams." *Brownfield v. City of Yakima*, 612 F.3d 1140, 1146 (9th Cir. 2010);
19 *Kroll v. White Lake Ambulance Auth.*, 763 F.3d 619, 623 (6th Cir. 2014) (decision
20 maker ordering examination must have a "reasonable belief based on *objective*
21 *evidence* that the employee's behavior threatens a *vital* function of the business")
22 (emphasis added).

23 47. Here, Defendant made an unlawful inquiry as to whether Plaintiff had a
24 mental disability, including the nature and severity of the same. Defendant also
25 mandated Plaintiff attend an unlawful medical and/or psychological examination. At
26 the time the FFD exam was mandated by Defendant, it could not show that the FFD
27 exam was both job related and consistent with a business necessity. Indeed, even *after*
28 Defendant forced Plaintiff onto a compulsory leave of absence, which Defendant's

1 policies required a showing of mental “incapacity,” Defendant inconsistently required
2 Plaintiff to continue performing high level job duties for two twelve-hour workdays,
3 which Plaintiff performed exemplarily. Moreover, just prior to mandating the FFD
4 exam, Plaintiff had taken about a seven week leave of absence during which time he
5 was able to reset to his baseline mood (which was corroborated by Plaintiff’s
6 psychiatrist). In short, the County had no objective basis as of March 15, 2021, that
7 the FFD exam was vital to the business or that Plaintiff posed a danger to himself or
8 others. In addition, based on the examiner’s statements, the FFD exam was not
9 tailored to assess Plaintiff’s ability to carry out the essential functions of the job or
10 whether he was currently a danger to himself or others.

11 48. As such, Defendant’s inquiry into the nature and severity of Plaintiff’s
12 mental disability and manding Plaintiff undergo a FFD exam violated the ADA, 42
13 U.S.C. §12112(d)(4)(a) and 29 C.F.R. §1630.14(c).

14 49. As a proximate result of Defendant’s wrongful conduct, Plaintiff has
15 suffered, and continues to suffer, substantial losses in earnings, earning capacity, and
16 other benefits of employment, all in an amount to be determined according to proof
17 at the time of trial, plus interest thereon.

18 50. As a further proximate result of Defendant’s wrongful conduct, Plaintiff
19 has suffered, and continues to suffer, humiliation, embarrassment, emotional distress,
20 and mental anguish, all in an amount to be determined according to proof at the time
21 of trial.

22 51. Plaintiff is also entitled to costs and reasonable attorneys’ fees pursuant
23 to 42 U.S.C. §12205, 42 U.S.C. §12117(a), and/or any other legal basis, because of
24 Defendant’s wrongful conduct.

COUNT III

**Disability Discrimination, Perceived Disability Discrimination
In Violation of California Government Code §12940(a)**

52. Plaintiff realleges and incorporates herein by reference each allegation in the preceding and subsequent paragraphs.

53. Government Code §12940 states in pertinent part: “It is an unlawful employment practice ... (a) [f]or an employer, because of the ... mental disability ... of any person ... to discharge the person from employment” Government Code §12926 defines “mental disability” to include “any mental or psychological disorder or condition, such as ... emotional or mental illness ... that limits a major life activity.” Gov’t Code §12926(j)(1). “A mental or psychological disorder or condition limits a major life activity if it makes the achievement of the major life activity difficult.” Gov’t Code §12926(j)(1)(B). “‘Major life activities’ shall be broadly construed and shall include physical, mental, and social activities and working.” Gov’t Code §12926(j)(1)(C). “Mental disability” includes, but is not limited to, “emotional or mental illness” and “chronic or episodic conditions such as clinical depression.” 2 C.C.R. §11065(d)(1). “Mental disability” includes “[b]eing regarded or treated by the employer ... as having, or having had, any mental condition that makes achievement of a major life activity difficult.” Gov’t Code §12926(j)(4); *see also Gelfo v. Lockheed Martin Corp.*, 140 Cal. App. 4th 34, 53 (2006).

54. At all times mentioned herein, Plaintiff was in a class of persons protected by Government Code §12940 because of his mental disability. Defendant also perceived Plaintiff as having a mental disability and as having, or having had, a record of a mental or psychological disorder or condition that made achievement of major life activities difficult. In the alternative, Defendant also regarded or treated Plaintiff as having, or having had, a mental or psychological disorder or condition that had no present disabling effect, but that may become a mental disability.

1 55. As alleged herein and in violation of Government Code §12940, *et seq.*,
2 Defendant discriminated against and wrongfully terminated Plaintiff's employment
3 because of his mental disability and because of Defendant's perceptions of Plaintiff's
4 mental or psychological disorder or condition as stated above.

5 56. As a proximate result of Defendant's wrongful conduct, Plaintiff has
6 suffered, and continues to suffer, substantial losses in earnings, earning capacity, and
7 other benefits of employment, all in an amount to be determined according to proof
8 at the time of trial, plus interest thereon.

9 57. As a further proximate result of Defendant's wrongful conduct, Plaintiff
10 has suffered, and continues to suffer, humiliation, embarrassment, emotional distress,
11 and mental anguish, all in an amount to be determined according to proof at the time
12 of trial.

13 58. Plaintiff is also entitled to costs and reasonable attorneys' fees pursuant
14 to Government Code §12965(b) because of Defendant's wrongful conduct.

15 **COUNT IV**

16 **Failure to Provide Reasonable Accommodation**
17 **In Violation of California Government Code §12940(m)**

18 59. Plaintiff realleges and incorporates herein by reference each allegation
19 in the preceding paragraphs.

20 60. Defendant is an employer within the meaning of and subject to California
21 Government Code section 12940, *et seq.* and employed Plaintiff.

22 61. At all relevant times herein, Plaintiff was an individual with a disability
23 as defined by the FEHA.

24 62. At all relevant times herein, Plaintiff was perceived and/or regarded by
25 Defendant as having a disability as defined by the FEHA.

26 63. The FEHA requires an employer to make reasonable accommodations
27 for the disability of employees to enable them to perform a position's essential
28

1 functions, unless doing so would produce undue hardship to the employer's
2 operations.

3 64. As a result of his disability, Plaintiff needed a reasonable
4 accommodation. The accommodation Plaintiff needed would not have caused undue
5 hardship on Defendant.

6 65. Defendant failed and refused to grant reasonable accommodations, as
7 required by law, to Plaintiff, and instead terminated his employment.

8 66. From the date Plaintiff was hired through the date of termination, he was
9 able to perform the essential functions of his job with or without a reasonable
10 accommodation, and he performed competently and capably.

11 67. As a direct and proximate result of the acts of Defendant as alleged
12 above, Plaintiff has incurred compensatory damages, including lost earnings and other
13 economic damages.

14 68. As a direct and proximate result of the acts Defendant as alleged above,
15 Plaintiff has also suffered emotional distress and has been generally damaged in an
16 amount to be ascertained at the time of trial.

17 69. As a direct and proximate result of the acts of Defendant, as alleged
18 above, Plaintiff has necessarily incurred and will continue to incur attorneys' fees and
19 costs in an amount to be proven at the time of trial. Pursuant to the provisions of
20 California Government Code §12965(b), Plaintiff is entitled to the reasonable value
21 of such attorneys' fees and costs.

22 **COUNT V**

23 **Failure to Engage in the Interactive Process**
24 **In Violation of California Government Code §12940(n)**

25 70. Plaintiff realleges and incorporates herein by reference each allegation
26 in the preceding paragraphs.

27 71. Defendant is an employer within the meaning of and subject to California
28 Gov. Code section 12940, *et seq.*, and employed Plaintiff.

1 72. At all relevant times, Plaintiff was an individual with a disability as
2 defined by Government Code section 12940, *et seq.*

3 73. At all relevant times herein Defendant knew, perceived, and/or regarded
4 Plaintiff as an individual with a disability.

5 74. Pursuant to Government Code section 12940(n), an employer must
6 engage in a “timely, good faith interactive process” in response to a request for a
7 reasonable accommodation by an employee with a known disability or known medical
8 condition.

9 75. California Government Code §12940(n), requires employers to engage
10 in a timely, good faith, interactive process with an employee to determine effective
11 reasonable accommodations if an employee with a known disability so requests. The
12 interactive process is the key mechanism for facilitating the integration of disabled
13 employees in the workplace and liability may be imposed on the employer for failing
14 to engage in this process.

15 76. Plaintiff gave notice to Defendant that he had a disability and required
16 reasonable accommodations, including without limitation, a finite extension of a
17 medical leave of absence to recuperate from symptoms associated with his disability.

18 77. Despite having notice of Plaintiff's disability and need for
19 accommodation, Defendant, by and through its agents and employees, engaged in an
20 unlawful employment practice when they failed and refused to engage in a good faith
21 interactive process, in violation of the FEHA.

22 78. Rather than engage in a good faith interactive process to ascertain
23 reasonable accommodations to enable Plaintiff to return to work, Defendant
24 terminated his employment.

25 79. As a direct and proximate result of the acts of Defendant, as alleged
26 above, Plaintiff has incurred compensatory damages, including lost earnings and other
27 economic damages.

28

1 80. As a direct and proximate result of the acts of Defendant, as alleged
2 above, Plaintiff has suffered emotional distress and has been generally damaged in an
3 amount to be ascertained at the time of trial.

4 81. As a direct and proximate result of the acts of Defendant, as alleged
5 above, Plaintiff has necessarily incurred and will continue to incur attorneys' fees and
6 costs in an amount to be proven at the time of trial. Pursuant to the provisions of
7 California Government Code §12965(b), Plaintiff is entitled to the reasonable value
8 of such attorneys' fees and costs.

9 **COUNT VI**

10 **Retaliation for Requesting Disability Accommodations**
11 **In Violation of California Government Code §12940(m)(2)**

12 82. Plaintiff realleges and incorporates herein by reference each allegation
13 in the preceding paragraphs.

14 83. Under California Government Code §12940(m)(1), it is an unlawful
15 employment practice for an employer to retaliate against a person for requesting a
16 reasonable accommodation due to a disability.

17 84. Plaintiff requested reasonable accommodations, including without
18 limitation, to take a medical leave of absence due to Plaintiff's disability and for a
19 reasonable finite extension of a medical leave of absence to recuperate from
20 symptoms associated with Plaintiff's disability. Defendant knew of Plaintiff's
21 requests for reasonable accommodations.

22 85. Because Plaintiff engaged in the legally protected activity of requesting
23 reasonable accommodations, Plaintiff suffered adverse employment actions,
24 including without limitation, termination.

25 86. As a direct and proximate result of the acts of Defendant, as alleged
26 above, Plaintiff has incurred compensatory damages, including lost earnings and other
27 economic damages.

1 87. As a direct and proximate result of the acts of Defendant, and each of
2 them, as alleged above, Plaintiff has suffered emotional distress and has been
3 generally damaged in an amount to be ascertained at the time of trial.

4 88. As a direct and proximate result of the acts of Defendant, as alleged
5 above, Plaintiff has necessarily incurred and will continue to incur attorneys' fees and
6 costs in an amount to be proven at the time of trial. Pursuant to the provisions of
7 California Government Code §12965(b), Plaintiff is entitled to the reasonable value
8 of such attorneys' fees and costs.

9 **COUNT VII**

10 **Failure to Prevent Discrimination and Retaliation**
11 **In Violation of California Government Code §12940(k)**

12 89. Plaintiff realleges and incorporates here by reference each and every
13 allegation in the preceding and subsequent paragraphs.

14 90. Under the FEHA, it is unlawful “[f]or an employer ... to fail to take all
15 reasonable steps necessary to prevent discrimination and harassment from occurring.”
16 Gov’t Code §12940(k). “[R]etaliation is a form of discrimination actionable under
17 [Government Code] section 12940, subdivision (k).” *Taylor v. City of Los Angeles*
18 *Dep’t of Water & Power*, 144 Cal. App. 4th 1216, 1239 (2006) (disapproved on other
19 grounds in *Jones v. The Lodge at Torrey Pines P’ship*, 42 Cal. 4th 1158, 1173-74
20 (2008)).

21 91. At all relevant times mentioned herein, Defendant was an employer and
22 Plaintiff was Defendant’s employee.

23 92. At all relevant times mentioned herein, Plaintiff was in a class of persons
24 protected by Government Code §12940 because of his mental disability and his
25 request for a reasonable accommodation for his mental disability. Defendant was
26 aware of Plaintiff’s mental disability and/or regarded or treated Plaintiff as having a
27 disability that made working difficult for Plaintiff. Defendant was also aware of
28

1 Plaintiff request for a reasonable accommodation, medical leave under the
2 FMLA/CFRA due to his mental disability, which Defendant granted.

3 93. As described above, Defendant discriminated against Plaintiff based on
4 his mental disability and/or perceived disability and retaliated against Plaintiff for
5 requesting a reasonable accommodation for his mental disability when it wrongfully
6 terminated her employment.

7 94. At all times mentioned herein, Defendant was aware of the
8 discriminatory and retaliatory conduct toward Plaintiff and failed to take reasonable
9 steps to prevent such conduct from occurring. Thus, Defendant violated Government
10 Code §12940(k).

11 95. As a proximate result of Defendant's wrongful conduct, Plaintiff has
12 suffered, and continues to suffer, substantial losses in earnings and job benefits in an
13 amount to be determined according to proof at the time of trial.

14 96. As a further proximate result of Defendant's wrongful conduct, Plaintiff
15 has suffered, and continues to suffer, humiliation, embarrassment, emotional distress,
16 and mental anguish, all in an amount to be determined according to proof at the time
17 of trial.

18 97. Plaintiff is also entitled to costs and reasonable attorneys' fees pursuant
19 to Government Code §12965(b) because of Defendant's wrongful conduct.

20 **COUNT VIII**

21 **Interference with the Right to Medical Leave**
22 **In Violation of California Government Code §12945.2, et seq.**

23 98. Plaintiff realleges and incorporates herein by reference each allegation
24 in the preceding and subsequent paragraphs.

25 99. At all times relevant hereto, Defendant was an "employer" subject to the
26 CFRA because Defendant was engaged in commerce, or in an industry affecting
27 commerce, and employed 50 or more employees. Gov't Code §12945.2(c)(2)(A).
28

1 100. At all times relevant hereto, Plaintiff was an eligible employee covered
2 by the CFRA because Plaintiff was employed by Defendant for at least 1,250 hours
3 during the 12-month period just prior to taking leave and worked at a worksite at
4 which Defendant employed more than 50 employees. Gov't Code §12945.2(a).
5 Defendant also led Plaintiff to believe Plaintiff was eligible for CFRA which Plaintiff
6 relied upon.

7 101. As an eligible employee, Plaintiff was entitled to 12 workweeks of leave
8 to care for a serious health condition. The CFRA permits leave because of the
9 employee's "own serious health condition that makes the employee unable to perform
10 the functions of the position of that employee." Gov't Code §12945.2(c)(3)(C).

11 102. Government Code §12945.2(l) provides that "[i]t shall be an unlawful
12 employment practice for an employer to ... discharge ... or discriminate against, any
13 individual because of ... [a]n individual's exercise of the right to family care and
14 medical leave."

15 103. Government Code §12945.2(t) further provides that "[i]t shall be an
16 unlawful employment practice for an employer to interfere with, restrain, or deny the
17 exercise of, or the attempt to exercise, any right provided under this section."

18 104. An employer must "respond to the leave request as soon as practicable
19 and in any event no later than five business days after receiving the employee's
20 request." 2 C.C.R. §11091(a)(6). To the extent not inconsistent, the CFRA also adopts
21 the federal regulations interpreting FMLA, including 29 C.F.R. §825.300(a)-(d). 2
22 C.C.R. §11096.

23 105. At relevant times, Plaintiff had a serious health condition for which he
24 was seeking continued treatment by a health care provider. From October 2020
25 through November 17, 2020, and again from January 15, 2021, through March 5,
26 2021, Plaintiff took protected leave under the CFRA. On or around March 22, 2021,
27 Defendant terminated Plaintiff's employment. In doing so, Defendant interfered with
28 Plaintiff's rights under the CFRA.

1 106. As a proximate result of Defendant's wrongful conduct, Plaintiff has
2 suffered, and continues to suffer, substantial losses in earnings, earning capacity, and
3 other benefits of employment, all in an amount to be determined according to proof
4 at the time of trial, plus interest thereon.

5 107. As a further proximate result of Defendant's wrongful conduct, Plaintiff
6 has suffered, and continues to suffer, humiliation, embarrassment, emotional distress,
7 and mental anguish, all in an amount to be determined according to proof at the time
8 of trial.

9 108. Plaintiff is also entitled to attorneys' fees pursuant to Government Code
10 §12965(b), because of Defendant's wrongful conduct.

11 **COUNT IX**

12 **Retaliation for Taking Medical Leave**
13 **In Violation of California Government Code §12945.2, et seq.**

14 109. Plaintiff realleges and incorporates herein by reference each allegation
15 in the preceding and subsequent paragraphs.

16 110. At all times relevant hereto, Defendant was an "employer" subject to the
17 CFRA because Defendant was engaged in commerce, or in an industry affecting
18 commerce, and employed 50 or more employees. Gov't Code §12945.2(c)(2)(A).

19 111. At all times relevant hereto, Plaintiff was an eligible employee covered
20 by the CFRA because Plaintiff was employed by Defendant for at least 1,250 hours
21 during the 12-month period just prior to taking leave and worked at a worksite at
22 which Defendant employed more than 50 employees. Gov't Code §12945.2(a).
23 Defendant also led Plaintiff to believe Plaintiff was eligible for CFRA which Plaintiff
24 relied upon.

25 112. As an eligible employee, Plaintiff was entitled to 12 workweeks of leave
26 to care for a serious health condition. The CFRA permits leave because of the
27 employee's "own serious health condition that makes the employee unable to perform
28 the functions of the position of that employee." Gov't Code §12945.2(c)(3)(C).

1 113. Government Code §12945.2(l) provides that “[i]t shall be an unlawful
2 employment practice for an employer to ... discharge ... or discriminate against, any
3 individual because of ... [a]n individual’s exercise of the right to family care and
4 medical leave.”

5 114. Government Code §12945.2(t) further provides that “[i]t shall be an
6 unlawful employment practice for an employer to interfere with, restrain, or deny the
7 exercise of, or the attempt to exercise, any right provided under this section.”

8 115. At relevant times, Plaintiff had a serious health condition for which he
9 was seeking continued treatment by a health care provider. From October 2020
10 through November 17, 2020, and again from January 15, 2021, through March 5,
11 2021, Plaintiff took protected leave under the CFRA. On or around March 22, 2021,
12 Defendant terminated Plaintiff’s employment. In doing so, Defendant retaliated
13 against Plaintiff for exercising her rights under the CFRA.

14 116. As a proximate result of Defendant’s wrongful conduct, Plaintiff has
15 suffered, and continues to suffer, substantial losses in earnings, earning capacity, and
16 other benefits of employment, all in an amount to be determined according to proof
17 at the time of trial, plus interest thereon.

18 117. As a further proximate result of Defendant’s wrongful conduct, Plaintiff
19 has suffered, and continues to suffer, humiliation, embarrassment, emotional distress,
20 and mental anguish, all in an amount to be determined according to proof at the time
21 of trial.

22 118. Plaintiff is also entitled to attorneys’ fees pursuant to Government Code
23 §12965(b), as a result of Defendant’s wrongful conduct.

24 **COUNT X**

25 **Interference with the Right to Medical Leave**
26 **In Violation of 29 U.S.C. §2601, et seq.**

27 119. Plaintiff realleges and incorporates herein by reference each allegation
28 in the preceding and subsequent paragraphs.

1 120. At all times relevant hereto, Defendant was an “employer” subject to the
2 FMLA because Defendant was engaged in commerce, or in an industry affecting
3 commerce, and employed 50 or more employees for each working day of the 20
4 workweeks just prior to Plaintiff taking FMLA leave. 29 U.S.C. §2611(4)(A)(i).

5 121. At all times relevant hereto, Plaintiff was an “eligible employee” covered
6 by the FMLA because Plaintiff was employed by Defendant for at least 1,250 hours
7 during the 12-month period just prior to taking FMLA leave and worked at a worksite
8 at which Defendant employed more than 50 employees. 29 U.S.C. §2611(2).
9 Defendant also led Plaintiff to believe Plaintiff was eligible for FMLA which Plaintiff
10 relied upon.

11 122. As an eligible employee, Plaintiff was entitled to 12 workweeks of leave
12 to care for a serious health condition which made him unable to perform the functions
13 of his job. 29 U.S.C. §2612(a)(1)(D). The FMLA defines a “serious health condition”
14 to include an “illness ... or physical ... condition ... that involves ... (B) continuing
15 treatment by a health care provider.” 29 U.S.C. §2611(11).

16 123. At all relevant times, Plaintiff had a serious health condition for which
17 he was seeking continued treatment by a health care provider. Based on information
18 and belief, Defendant failed to appropriately apprise Plaintiff of his rights under the
19 FMLA and further, Defendant terminated Plaintiff’s employment because Plaintiff
20 exercised his right to FMLA leave. As such, Defendant interfered with Plaintiff’s
21 FMLA rights.

22 124. As a proximate result of Defendant’s wrongful conduct, Plaintiff has
23 suffered, and continues to suffer, substantial losses in earnings, earning capacity, and
24 other benefits of employment, all in an amount to be determined according to proof
25 at the time of trial, plus interest thereon.

26 125. As a result of Defendant’s willful misconduct, Plaintiff is also entitled to
27 liquidated damages equal to the sum of his substantial losses in earnings, earning
28

1 capacity, and other benefits of employment, plus interest thereon, pursuant to 29
2 U.S.C. §2617(a)(1)(A)(iii).

3 126. As a further proximate result of Defendant's wrongful conduct, Plaintiff
4 has suffered, and continues to suffer, humiliation, embarrassment, emotional distress,
5 and mental anguish, all in an amount to be determined according to proof at the time
6 of trial.

7 127. Finally, because of Defendant's wrongful conduct, Plaintiff is entitled to
8 attorneys' fees, expert witness fees, and other costs of the action pursuant to 29 U.S.C.
9 §2617(a)(3).

10 **COUNT XI**

11 **Retaliation for Taking Medical Leave**
12 **In Violation of 29 U.S.C. §2601, et seq.**

13 128. Plaintiff realleges and incorporates herein by reference each allegation,
14 in the preceding and subsequent paragraphs.

15 129. At all times relevant hereto, Defendant was an "employer" subject to the
16 FMLA because Defendant was engaged in commerce, or in an industry affecting
17 commerce, and employed 50 or more employees for each working day of the 20
18 workweeks just prior to Plaintiff taking FMLA leave. 29 U.S.C. §2611(4)(A)(i).

19 130. At all times relevant hereto, Plaintiff was an "eligible employee" covered
20 by the FMLA because Plaintiff was employed by Defendant for at least 1,250 hours
21 during the 12-month period just prior to taking leave and worked at a worksite at
22 which Defendant employed more than 50 employees. 29 U.S.C. §2611(2). Defendant
23 also led Plaintiff to believe Plaintiff was eligible for FMLA which Plaintiff relied
24 upon.

25 131. As an eligible employee, Plaintiff was entitled to 12 workweeks of leave
26 to care for a serious health condition which made him unable to perform the functions
27 of his job. 29 U.S.C. §2612(a)(1)(D). The FMLA defines a "serious health condition"
28

1 to include an “illness ... or physical ... condition that involves ... (B) continuing
2 treatment by a health care provider.” 29 U.S.C. §2611(11).

3 132. At all relevant times, Plaintiff had a serious health condition for which
4 he was seeking continued treatment by a health care provider.

5 133. From October 2020 through November 17, 2020 and again from January
6 15, 2021 through March 5, 2021, Plaintiff took protected leave under the FMLA. On
7 or around March 22, 2021, Defendant terminated Plaintiff’s employment. In doing
8 so, Defendant retaliated against Plaintiff for exercising his rights under the FMLA.

9 134. As a proximate result of Defendant’s wrongful conduct, Plaintiff has
10 suffered, and continues to suffer, substantial losses in earnings, earning capacity, and
11 other benefits of employment, all in an amount to be determined according to proof
12 at the time of trial, plus interest thereon.

13 135. As a result of Defendant’s willful misconduct, Plaintiff is also entitled to
14 liquidated damages equal to the sum of his substantial losses in earnings, earning
15 capacity, and other benefits of employment, plus interest thereon, pursuant to 29
16 U.S.C. §2617(a)(1)(A)(iii).

17 136. As a further proximate result of Defendant’s wrongful conduct, Plaintiff
18 has suffered, and continues to suffer, humiliation, embarrassment, emotional distress,
19 and mental anguish, all in an amount to be determined according to proof at the time
20 of trial.

21 137. Finally, because of Defendant’s wrongful conduct, Plaintiff is entitled to
22 attorneys’ fees, expert witness fees, and other costs of the action pursuant to 29 U.S.C.
23 §2617(a)(3).

24 **PRAYER**

25 WHEREFORE, the Plaintiff seeks judgment as follows:

26 A. For compensatory damages, including loss of wages and benefits (past
27 and future), and emotional distress damages (past and future) according to proof at
28 trial;

1 B. For pre-judgment and post-judgment interest to the extent allowable by
2 law;

3 C. For attorneys' fees and costs pursuant to Government Code §12965(b),
4 29 U.S.C. §2617(a)(3), 42 U.S.C. §12205, 42 U.S.C. §12117(a), or as otherwise
5 allowed by law;

6 D. For liquidated damages equal to the sum of Plaintiff's substantial losses
7 in earnings, earning capacity, and other benefits of employment, plus interest thereon,
8 pursuant to 29 U.S.C. §2617(a)(1)(A)(iii);

9 E. For an injunction restraining Defendant from continuing to engage in
10 unlawful practices; and

11 F. For such other and further relief as the Court deems just and proper.

12 **DEMAND FOR JURY TRIAL**

13 Plaintiff demands a trial by jury on all claims.

14 Dated: September 8, 2021

CEARTAS LEGAL LLP
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