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Attorneys for Plaintiff
JESUS FONSECA



IN THE UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA, EASTERN DIVISION

JESUS FONSECA

Plaintiff,

v.

WAL-MART ASSOCIATES, INC., a
corporation; **WALMART INC.**, a
corporation; **TISHA SNYDER**, an
individual; **AISHA OGUNLANA**, an
individual; and **DOES 1 through 25**,
inclusive

Defendants.

Case No.: 5:19-cv-00821-JGB-KK

**FIRST AMENDED
COMPLAINT FOR DAMAGES
FOR:**

1. Disability Discrimination (Cal. Gov't Code § 12940(a));
2. Failure to Accommodate (Cal. Gov't Code § 12940(m));
3. Failure to Engage in an Interactive Process (Cal. Gov't Code § 12940(n));
4. Retaliation under FEHA (Cal. Gov't Code § 12940(h));
5. Failure to Prevent Discrimination (Cal. Gov't Code § 12940(k));
6. Interference under CFRA (Cal. Gov't Code § 12945.2(t));
7. Retaliation under CFRA (Cal. Gov't Code § 12945.2(l)(1));
8. Hostile Work Environment §

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- 12940(j);
 9. Wrongful Termination in Violation
 of Public Policy;
 10. Intentional Infliction of Emotional
 Distress; and
 11. Defamation

DEMAND FOR JURY TRIAL

Plaintiff JESUS FONSECA, by and through his attorney, alleges against Defendants, and each of them, as follows:

JURISDICTION AND VENUE

1. Jurisdiction is conferred on the Court over Defendants named herein as they are residents of the State of California, and/or conducts business in the State of California. Jurisdiction is conferred on this Court as to all causes of action as they arise under state statutory or common law.

2. Venue is proper in this Court because Defendants reside in this County or conducts business in this County, and because a substantial part of the events and omissions giving rise to Plaintiff's causes of action occurred in this County.

THE PARTIES

3. Plaintiff is, and at all times material hereto was an individual residing in the County of San Bernardino, State of California.

4. Plaintiff is informed, believes and on that basis alleges that at all times relevant herein, Defendant WAL-MART ASSOCIATES, INC. ("Defendant"), was a corporation doing business under the laws of the State of California, in the County of San Bernardino.

5. Plaintiff is informed, believes and on that basis alleges that at all times relevant herein, Defendant WALMART INC. ("Defendant"), was a corporation doing business under the laws of the State of California, in the County of San Bernardino.

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1 6. Plaintiff is informed and believes, and based upon such information and
2 belief alleges, that at all times relevant herein, TISHA SNYDER (“SNYDER”) was
3 a resident of San Bernardino County.

4 7. Plaintiff is informed and believes, and based upon such information and
5 belief alleges, that at all times relevant herein, AISHA OGUNLANA
6 (“OGUNLANA”) was a resident of San Bernardino County.

7 8. Plaintiff is informed and believes, and based upon such information and
8 belief, alleges that Defendants DOES 1 through 25 are employed by Defendant, or
9 acted in partnership with WAL-MART ASSOCIATES, INC., in hiring, training,
10 supervising, and retaining Defendants DOES 1 through 25.

11 9. Plaintiff is informed and believes, and based upon such information and
12 belief, alleges that Defendants DOES 1 through 25 are employed by Defendant, or
13 acted in partnership with WALMART INC., in hiring, training, supervising, and
14 retaining Defendants DOES 1 through 25.

15 10. The true names and capacities of Defendants sued herein as Does 1
16 through 25, inclusive, are unknown to Plaintiff, who therefore sues such Defendants
17 by such fictitious names pursuant to Code of Civil Procedure § 474. Plaintiff alleges
18 that each fictitiously named Defendant acted or failed to act in such a manner that
19 each has contributed in proximately causing the damages to Plaintiff as herein
20 alleged. Plaintiff will seek leave of Court to amend this Complaint to set forth their
21 true names and capacities when ascertained.

22 11. All of the acts and failures to act alleged herein were duly performed by
23 and attributable to all Defendants, each acting as a successor, agent, alter ego,
24 employee, indirect employer, joint employer, integrated enterprise and/or under the
25 direction and control of the others, except as specifically alleged otherwise. Said acts
26 and failures to act were within the scope of such agency and/or employment, and
27 each Defendant participated in, approved and/or ratified the unlawful acts and
28 omissions by the other Defendants complained of herein. Whenever and wherever

reference is made in this Complaint to any act by a Defendant or Defendants, such allegations and reference shall also be deemed to mean the acts and failures to act of each Defendant acting individually, jointly, and/or severally.

FACTS COMMON TO MORE THAN ONE CAUSE OF ACTION

12. Plaintiff worked for Defendants as a truck driver for 14 years.

13. Throughout Plaintiff's employment, he competently executed all tasks and was commended for his hard work and dedication. Plaintiff's yearly performance reviews were always satisfactory and exceeded expectations. As a result of Plaintiff's hard work and safety practices, he received quarterly bonuses throughout the entirety of his employment. In addition, Plaintiff received numerous awards, including model safety trucks, safety jackets, certificates and annual safety belt buckles. Also, Plaintiff was a leader in his department. He was involved in a hiring committee, a safety committee, and a set run committee. Additionally, Plaintiff trained drivers and was a mentor for approximately 12 drivers. What's more, Plaintiff was highly respected and admired for his work ethic. In fact, in or around 2008, Plaintiff was selected to represent the Apple Valley distribution center at an event in the Bentonville offices by his then-manager Jerry Jackson. One driver was selected by the general transportation manager from each distribution center around the country to attend this event. It was considered a high honor to be selected.

14. On June 19, 2017, Plaintiff was victim to a vehicle accident while working for Defendants where he was rear ended on the highway. Plaintiff was transported to the hospital to treat his injuries.

15. Plaintiff filed a workers' compensation claim for his injuries resulting from the accident shortly after. Starting June 26, 2017 through the time of his termination, Plaintiff was evaluated by his doctor every few weeks and his work restrictions were routinely modified. Plaintiff's work restrictions varied, but for the most part they included no pushing, pulling and lifting over 5-10 pounds and no commercial driving.

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1 All of these restrictions were properly communicated to Defendants. Defendants failed
2 to accommodate Plaintiff's each and every request for accommodations.

3 16. On February 3, 2018, Defendants denied Plaintiff's last request for
4 modified duty before he was terminated.

5 17. Defendants continuously failed to accommodate Plaintiff's work
6 restrictions, and Plaintiff was placed on medical leave starting on June 20, 2017.
7 Defendants further failed to engage Plaintiff to explore alternative tasks or shifts that
8 could keep Plaintiff employed. Plaintiff was not totally disabled. Plaintiff specifically
9 requested to be allowed to work modified duties and inquired about being placed in
10 an office position where he could perform desk duty or any other position that could
11 accommodate his restrictions. In fact, a few years prior to Plaintiff's job-related
12 accident, he began working in the distribution center's office one or two days per
13 week. Plaintiff was in charge of mapping out store and vendor routes on Defendants'
14 computers. After Plaintiff entered the map and route information, the drivers simply
15 had to input a store or vendor number in the navigation system, and they were routed
16 to an exact driveway to enter the premises. Also, there was additional office work
17 Plaintiff could have performed, had Defendants allowed him to do so.

18 18. On January 31, 2018, Plaintiff received a call from Defendants.
19 Plaintiff was informed that there was a report of fraud and questioned him for
20 approximately 20 to 30 minutes. Defendants told Plaintiff that they were informed
21 that he was driving a vehicle and his restrictions provided that he could not drive.
22 Plaintiff informed Defendants that his restriction not to drive was as to **commercial**
23 vehicles for *commercial* purposes. Plaintiff did not understand those restrictions to
24 include personal driving, especially because he drove to his doctor's appointments
25 and was not informed that he could not drive himself to his appointments. Plaintiff
26 maintained that he did not do anything wrong.

27 19. Plaintiff's workers' compensation claim continued without incident and
28 he did not receive any further information or communications from Defendants as to

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the alleged fraud until March 27, 2018, when SNYDER called Plaintiff and accused him of fraud and told him that his employment was going to be terminated because of gross misconduct and integrity. SNYDER called Plaintiff in the presence of a third party, Plaintiff's supervisor, Lou Lacroix.

20. On March 28, 2018, Plaintiff attempted to discuss his termination with Walmart's VP of transportation, Jeff Hammonds. However, Mr. Hammonds initially said he would get back to Plaintiff's by end of day, then he refused to speak with him since Plaintiff was represented by workers' compensation counsel.

21. On March 29, 2018, OGUNLANA prepared Plaintiff's termination letter. In the section titled "REASON FOR SEPARATION", OGUNLANA wrote: "Gross misconduct – Other" "Jesus was terminated involuntarily for gross misconduct and integrity."

22. On March 29, 2018, while Plaintiff was on leave for his work-related injuries, Defendants terminated his employment.

23. On November 14, 2018, Plaintiff applied for a job and during the course of the interview, Plaintiff was forced to inform the prospective employer that he was terminated by Defendants for gross misconduct and integrity because he was suspected of committing fraud. Plaintiff did not get a call back from the prospective employer.

24. On November 14, 2018, Plaintiff spoke with two other prospective employers and was asked to fill out an application online. Plaintiff was forced to disclose that he was terminated from Walmart for gross misconduct and integrity because he was suspected of committing fraud. Plaintiff was not considered for either job.

FIRST CAUSE OF ACTION

DISABILITY DISCRIMINATION IN VIOLATION OF FEHA

(CAL. GOV'T CODE § 12940(a) et seq.)

(Against All Corporate Defendants Inclusive of DOES 1-25)

25. Plaintiff re-alleges the information set forth in Paragraphs 1 through 24

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1 above and incorporates these paragraphs into this cause of action as if they were
2 fully alleged herein.

3 26. The California Fair Employment and Housing Act ("FEHA") prohibits
4 employers from discharging or otherwise discriminating against an employee on the
5 basis of disability in
6 compensation, terms, conditions, or privileges of employment. Cal. Gov't Code §
7 12940(a).

8 27. At all times mentioned in this Complaint, Plaintiff was an "eligible
9 employee" under the California Labor and Government Codes.

10 28. At all times mentioned in this Complaint, Defendants were a "covered
11 employer" under FEHA, Cal. Gov't Code § 12900, et seq., as Defendants employed 5
12 or more people to perform services for a salary or wage in the State of California.

13 29. Plaintiff suffered from a disability during his employment with
14 Defendants. Plaintiff was subjected to discrimination and adverse employment action
15 when, on March 29, 2018, his employment was terminated for needing medical leave
16 of absence and suffering from a disability.

17 30. Plaintiff reasonably believes he can perform the essential functions of
18 multiple employment positions with Defendants, including, but not limited to, truck
19 driver.

20 31. Plaintiff is informed and believes, and thereon alleges, that his disability,
21 and need for medical leave of absence, were substantial motivating reasons for
22 Defendants' decision to terminate his employment, in violation of Government Code §
23 12940, *et seq.*

24 32. As a direct and proximate result of the unlawful conduct of the
25 Defendants, Plaintiff has suffered special damages, including, but not limited to, past
26 and future loss of income, benefits, and other damages to be proven at time of trial.

27 33. As a direct and proximate result of the unlawful conduct of the
28 Defendants, Plaintiff has suffered general damages, including, but not limited to,

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1 shock, embarrassment, physical distress and injury, humiliation, emotional distress,
 2 stress and other damages to be proven at the time of trial.

3 34. The unlawful conduct alleged above was engaged in by supervisors
 4 and/or managing agents of each of the Defendants who were acting at all times
 5 relevant to this Complaint within the scope and course of their employment.
 6 Defendants are liable for the conduct of said agents and employees under the doctrine
 7 of strict liability.

8 35. Defendants committed these acts maliciously, fraudulently, and
 9 oppressively in conscious disregard for the Plaintiff's rights. Defendants committed
 10 and/or ratified the acts alleged herein. These acts were committed with the knowledge
 11 of employees' lack of fitness in the workplace but were allowed to proceed, managing
 12 agents of Defendants. Plaintiff is therefore
 13 entitled to recover punitive damages from Defendants in an amount according to proof
 14 at trial.

15 36. As a result of the conduct of Defendants, Plaintiff was forced to retain an
 16 attorney in order to protect his rights. Accordingly, Plaintiff seeks the reasonable
 17 attorneys' fees and costs incurred in this litigation in an amount according to proof at
 18 trial.

19 **SECOND CAUSE OF ACTION**

20 **FAILURE TO ACCOMMODATE IN VIOLATION OF FEHA**

21 **(CAL. GOV'T CODE § 12940(m) et seq.)**

22 **(Against All Corporate Defendants Inclusive of DOES 1-25)**

23 37. Plaintiff re-alleges the information set forth in Paragraphs 1 through 36
 24 above and incorporates these paragraphs into this cause of action as if they were
 25 fully alleged herein.

26 38. Defendants had an affirmative duty to make reasonable
 27 accommodations for Plaintiff's disability. This duty arises even if an
 28 accommodation is not requested. Defendants breached this duty first when they

1 refused to accommodate Plaintiff's work restrictions of September 20, 2017, and
 2 subsequently when they terminated Plaintiff on March 29, 2018, without
 3 accommodating Plaintiff's disability.

4 39. Defendants failed to allow Plaintiff adequate time to return to work.

5 40. As a direct and proximate result of the unlawful conduct of the
 6 Defendants, Plaintiff has suffered special damages, including, but not limited to,
 7 past and future loss of income, benefits, and other damages to be proven at time of
 8 trial.

9 41. As a direct and proximate result of the unlawful conduct of the
 10 Defendants, Plaintiff has suffered general damages, including, but not limited to,
 11 shock, embarrassment, physical distress and injury, humiliation, emotional distress,
 12 stress and other damages to be proven at the time of trial.

13 42. The unlawful conduct alleged above was engaged in by the officers,
 14 directors, supervisors and/or managing agents of each of the Defendants who were
 15 acting at all times relevant to this Complaint within the scope and course of their
 16 employment. Defendants are liable for the conduct of said agents and employees
 17 under the doctrine of strict liability.

18 43. Defendants committed these acts maliciously, fraudulently and
 19 oppressively in conscious disregard for the Plaintiff's rights. Defendants committed
 20 and/or ratified the acts alleged herein. These acts were committed with the
 21 knowledge of employees' lack of fitness in the workplace but were allowed to
 22 proceed, by officers, directors, and/or managing agents of Defendants. Plaintiff is
 23 therefore entitled to recover punitive damages from Defendants in an amount
 24 according to proof at trial.

25 **THIRD CAUSE OF ACTION**

26 **FAILURE TO ENGAGE IN AN INTERACTIVE PROCESS**

27 **IN VIOLATION OF FEHA**

28 **(CAL. GOV'T CODE § 12940(n) et seq.)**

(Against All Corporate Defendants Inclusive of DOES 1-25)

44. Plaintiff re-alleges the information set forth in Paragraphs 1 through 43 above and incorporates these paragraphs into this cause of action as if they were fully alleged herein.

45. Plaintiff was diagnosed with a disability that limited Plaintiff in major life activities, including, but not limited to, working. Defendants knew about Plaintiff's disability. Despite his disability, Plaintiff was qualified and able to perform the essential functions of his job with a reasonable accommodation or continued medical leave.

46. Plaintiff maintained Defendants informed of his need for continued time off to cope with his disability which he had suffered during the scope of his employment. Plaintiff timely followed protocol and made sure his employer received the required information.

47. Defendants failed to engage in a good faith interactive process to determine whether further reasonable accommodation, or current reasonable accommodations of extended medical leave, could be made to ensure Plaintiff could return to work and perform the essential functions of his job, or other open positions with Defendants. Instead, Defendants choose to not to accommodate Plaintiff's need for additional accommodation and leave from work.

48. Defendants failed to perform an individual assessment of Plaintiff's ability to perform the essential functions of any position with Defendant, either with or without a reasonable accommodation.

49. Defendant's failure to engage in the interactive process was a substantial factor in causing Plaintiff harm.

50. As a direct and proximate result of the unlawful conduct of the Defendants, Plaintiff has suffered special damages, including, but not limited to, past and future loss of income, benefits, and other damages to be proven at time of trial.

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1 51. As a direct and proximate result of the unlawful conduct of the
2 Defendants, Plaintiff has suffered general damages, including, but not limited to,
3 shock, embarrassment, physical distress and injury, humiliation, emotional distress,
4 stress and other damages to be proven at the time of trial.

5 52. The unlawful conduct alleged above was engaged in by the officers,
6 directors, supervisors and/or managing agents of each of the Defendants who were
7 acting at all times relevant to this Complaint within the scope and course of their
8 employment. Defendants are liable for the conduct of said agents and employees
9 under the doctrine of strict liability.

10 53. Defendants committed these acts maliciously, fraudulently and
11 oppressively in conscious disregard for the Plaintiff's rights. Defendants committed
12 and/or ratified the acts alleged herein. These acts were committed with the knowledge
13 of employees' lack of fitness in the workplace but were allowed to proceed, managing
14 agents of Defendants. Plaintiff is therefore entitled to recover punitive damages from
15 Defendants in an amount according to proof at trial.

16 54. As a result of the conduct of Defendants, Plaintiff was forced to retain an
17 attorney in order to protect his rights. Accordingly, Plaintiff seeks the reasonable
18 attorneys' fees and costs incurred in this litigation in an amount according to proof at
19 trial.

20 **FOURTH CAUSE OF ACTION**
21 **RETALIATION IN VIOLATION OF FEHA**
22 **(CAL. GOV'T CODE § 12940(h) et seq.)**

23 **(Against All Corporate Defendants Inclusive of DOES 1-25)**

24 55. Plaintiff re-alleges the information set forth in Paragraphs 1 through 54
25 above and incorporates these paragraphs into this cause of action as if they were fully
26 alleged herein.

27 56. California law further protects employees from retaliation for exercising
28 the right to oppose a practice prohibited by FEHA, Cal. Gov't Code, § 12900, *et seq.*

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1 57. Plaintiff's requests to take medical leave related to his disability were
2 motivating reasons for his termination.

3 58. Defendant's retaliatory conduct was a substantial factor in causing
4 Plaintiff's harm.

5 59. Defendants committed unlawful retaliation in violation of Section 12940,
6 subdivision (h), by terminating Plaintiff for seeking accommodation and opposing
7 disability discrimination, practices prohibited by FEHA. Plaintiff was subjected to
8 discrimination and adverse employment action by Defendants because of his
9 disability. Specifically, Defendants terminated Plaintiff for his request for time off to
10 deal with his disability. In addition, Defendant refused to accommodate Plaintiff's
11 disability.

12 60. Defendants, by and through its supervisors and/or agents, discriminated
13 and retaliated against Plaintiff because of his disability. Plaintiff was subjected to
14 discrimination and adverse employment action by Defendants because of his
15 disability. Specifically, Defendants terminated Plaintiff for requesting, and needing,
16 medical leave of absence related to his disability.

17 61. Plaintiff is informed and believes, and thereon alleges, that his disability,
18 along with the possibility that he might require leave for treatment in the future, were
19 substantial motivating factors in Defendants' decision to treat him differently from
20 similarly situated non-disabled employees. Plaintiff further alleges, on information and
21 belief, that he was subjected to different terms and conditions of employment than his
22 non-disabled co-workers.

23 62. As a direct and proximate result of the unlawful conduct of the
24 Defendants, Plaintiff has suffered special damages, including, but not limited to, past
25 and future loss of income, benefits,
26 and other damages to be proven at time of trial.

27 63. As a direct and proximate result of the unlawful conduct of the
28 Defendants, Plaintiff has suffered general damages, including, but not limited to,

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1 shock, embarrassment, physical distress and injury, humiliation, emotional distress,
2 stress and other damages to be proven at the time of trial.

3 64. The unlawful conduct alleged above was engaged in by supervisors
4 and/or managing agents of each of the Defendants who were acting at all times
5 relevant to this Complaint within the scope and course of their employment.
6 Defendants are liable for the conduct of said agents and employees under the doctrine
7 of strict liability.

8 65. Defendants committed these acts maliciously, fraudulently, and
9 oppressively in conscious disregard for the Plaintiff's rights. Defendants committed
10 and/or ratified the acts alleged herein. These acts were committed with the knowledge
11 of employees' lack of fitness in the workplace but were allowed to proceed, by
12 managing agents of Defendants. Plaintiff is therefore entitled to recover punitive
13 damages from Defendants in an amount according to proof at trial.

14 66. As a result of the conduct of Defendants, Plaintiff was forced to retain an
15 attorney in order to protect his rights. Accordingly, Plaintiff seeks the reasonable
16 attorneys' fees and costs incurred in this litigation in an amount according to proof at
17 trial.

18 **FIFTH CAUSE OF ACTION**

19 **FAILURE TO PREVENT DISCRIMINATION IN VIOLATION OF FEHA**

20 **(CAL. GOV'T CODE § 12940(k) et seq.)**

21 **(Against All Corporate Defendants Inclusive of DOES 1-25)**

22 67. Plaintiff re-alleges the information set forth in Paragraphs 1 through 66
23 above and incorporates these paragraphs into this cause of action as if they were fully
24 alleged herein.

25 68. Defendants failed to take all reasonable steps to prevent discrimination
26 against Plaintiff from occurring and failed to take immediate corrective action to
27 remedy the discrimination, in violation of FEHA, Cal. Gov't Code § 12940(k)).
28

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69. Specifically, Defendants failed to take any disciplinary measures to prevent and/or remedy the discrimination against Plaintiff, such as issuing a formal warning, providing counseling, or imposing probation, suspension, or termination, or conducting a prompt and thorough investigation into Plaintiff's complaints of discrimination and retaliation, that are the subject of this lawsuit.

70. As a direct and proximate result of the unlawful conduct of the Defendants and Defendants failures to act, Plaintiff has suffered special damages, including, but not limited to, past and future loss of income, benefits, and other damages to be proven at time of trial.

71. As a direct and proximate result of the unlawful conduct of the Defendants, Plaintiff has suffered general damages, including, but not limited to, shock, embarrassment, physical distress and injury, humiliation, emotional distress, stress and other damages to be proven at the time of trial.

72. The unlawful conduct alleged above was engaged in by supervisors and/or managing agents of each of the Defendants who were acting at all times relevant to this Complaint within the scope and course of their employment. Defendants are liable for the conduct of said agents and employees under the doctrine of strict liability.

73. Defendants committed these acts maliciously, fraudulently, and oppressively in conscious disregard for the Plaintiff's rights. Defendants committed and/or ratified the acts alleged herein. These acts were committed with the knowledge of employees' lack of fitness in the workplace but were allowed to proceed managing agents of Defendants. Plaintiff is therefore entitled to recover punitive damages from Defendants in an amount according to proof at trial.

74. As a result of the conduct of Defendants, Plaintiff was forced to retain an attorney in order to protect his rights. Accordingly, Plaintiff seeks the reasonable

1 attorneys' fees and costs incurred in this litigation in an amount according to proof at
2 trial.

3 **SIXTH CAUSE OF ACTION**
4 **INTERFERENCE IN VIOLATION OF CFRA**
5 **(CAL. GOV'T CODE § 12945.2(t))**
6 **(Against All Corporate Defendants Inclusive of DOES 1-25)**

7 75. Plaintiff re-alleges the information set forth in Paragraphs 1 through 74
8 above and incorporates these paragraphs into this cause of action as if they were fully
9 alleged herein.

10 76. The California Family Rights Act ("CFRA"), Cal. Gov't Code § 12945.2,
11 et seq., ensures employee leave rights for, *inter alia*, an employee's own serious health
12 condition.

13 77. California Government Code section 12945.2 (t) states, in part, it is
14 unlawful for an employer "to interfere with, restrain, or deny the exercise of, or the
15 attempt to exercise, any right" provided by CFRA.

16 78. Plaintiff was an "eligible employee" under the California Family Rights
17 Act ("CFRA").

18 79. Defendants were a "covered employer" under the CFRA.

19 80. Plaintiff provided employer Defendants with adequate notice of
20 Plaintiff's request for protected medical leave.

21 81. Plaintiff requested medical leave from his employment for reasons
22 covered under the CFRA, including Plaintiff's own serious medical condition.

23 82. Defendants violated and interfered with the CFRA, and retaliated against
24 Plaintiff following his medical leave, by retaliating and terminating his employment
25 for taking protected leave from work.

26 83. Defendants had a legal duty to not interfere or retaliate with Plaintiff's
27 rights under the CFRA.

28

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1 84. On or about March 29, 2018, Defendants effectively interfered with
2 Plaintiff's ability to take CFRA protected leave by terminating his employment
3 without inquiring about Plaintiff's ability to return to work. By doing so, Defendants
4 interfered with Plaintiff's right to be permitted to return to work from protected
5 CFRA leave. Defendants interfered with CFRA's right to reinstatement from
6 medical leave.

7 85. As a direct and proximate result of the unlawful conduct of the
8 Defendants and Defendants failures to act, Plaintiff has suffered special damages,
9 including, but not limited to, past and future loss of income, benefits, and other
10 damages to be proven at time of trial.

11 86. As a direct and proximate result of the unlawful conduct of the
12 Defendants, Plaintiff has suffered general damages, including, but not limited to,
13 shock, embarrassment, physical distress and injury, humiliation, emotional distress,
14 stress and other damages to be proven at the time of trial.

15 87. The unlawful conduct alleged above was engaged in by supervisors
16 and/or managing agents of each of the Defendants who were acting at all times
17 relevant to this Complaint within the scope and course of their employment.
18 Defendants are liable for the conduct of said agents and employees under the doctrine
19 of strict liability.

20 88. Defendants committed these acts maliciously, fraudulently, and
21 oppressively in conscious disregard for the Plaintiff's rights. Defendants committed
22 and/or ratified the acts alleged herein. These acts were committed with the
23 knowledge of employees' lack of fitness in the workplace but were allowed to
24 proceed, by officers, directors, and/or managing agents of Defendants. Plaintiff is
25 therefore entitled to recover punitive damages from Defendants in an amount
26 according to proof at trial.

27 89. As a result of the conduct of Defendants, Plaintiff was forced to retain an
28 attorney in order to protect his rights. Accordingly, Plaintiff seeks the reasonable

1 attorneys' fees and costs incurred in this litigation in an amount according to proof at
2 trial.

3 **SEVENTH CAUSE OF ACTION**
4 **RETALIATION IN VIOLATION OF CFRA**
5 **(CAL. GOV'T CODE § 12945.2(l)(1))**

6 **(Against All Corporate Defendants Inclusive of DOES 1-25)**

7 90. Plaintiff re-alleges the information set forth in Paragraphs 1 through 89
8 above and incorporates these paragraphs into this cause of action as if they were fully
9 alleged herein.

10 91. The California Family Rights Act ("CFRA"), Cal. Gov't Code § 12945.2,
11 et seq., ensures employee leave rights for, *inter alia*, an employee's own serious health
12 condition.

13 92. California Government Code section 12945.2 (t) states, in part, it is
14 unlawful to "retaliate against any individual because of his or her exercise of the right
15 to family care or medical leave as provided by CFRA".

16 93. Plaintiff is informed and believes, and thereon alleges that she was
17 discriminated and retaliated against in the terms and conditions of his employment, as
18 outlined above, as a result of exercising his right to request and/or take medical leave
19 from his employment.

20 94. Plaintiff was an "eligible employee" under the California Family Rights
21 Act ("CFRA").

22 95. Defendants were a "covered employer" under the CFRA.

23 96. Plaintiff provided employer Defendants with adequate notice of
24 Plaintiff's request for protected medical leave.

25 97. Plaintiff requested medical leave from her employment for reasons
26 covered under the CFRA, including Plaintiff's own serious medical condition.

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1 98. Defendants violated the CFRA, and retaliated against Plaintiff following
2 his medical leave, by retaliating and terminating his employment for taking protected
3 leave from work.

4 99. Defendants had a legal duty to not interfere or retaliate with Plaintiff's
5 rights under
6 the CFRA.

7 100. Plaintiff is informed and believes and thereon alleges that Defendants
8 willfully and/or with reckless indifference, violated the CFRA, California Government
9 Code Section 12945.2, by retaliating against Plaintiff for exercising his right to take a
10 medical leave. Such actions have resulted in damage and injury to Plaintiff as alleged
11 herein.

12 101. Plaintiff's medical condition and assertion of his right to CFRA leave
13 were motivating reasons for his termination.

14 102. Defendants' retaliatory conduct was a substantial factor in causing
15 Plaintiff's harm.

16 103. As a direct and proximate result of the unlawful conduct of the
17 Defendants, Plaintiff has suffered special damages, including, but not limited to, past
18 and future loss of income, benefits, and other damages to be proven at time of trial.

19 104. As a direct and proximate result of the unlawful conduct of the
20 Defendants, Plaintiff has suffered general damages, including, but not limited to,
21 shock, embarrassment, physical distress and injury, humiliation, emotional distress,
22 stress and other damages to be proven at the time of trial.

23 105. The unlawful conduct alleged above was engaged in by the officers,
24 directors, supervisors and/or managing agents of each of the Defendants who were
25 acting at all times relevant to this Complaint within the scope and course of their
26 employment. Defendants are liable for the conduct of said agents and employees
27 under the doctrine of strict liability.
28

106. Defendants committed these acts maliciously, fraudulently, and oppressively in conscious disregard for the Plaintiff's rights. Defendants committed and/or ratified the acts alleged herein. These acts were committed with the knowledge of employees' lack of fitness in the workplace but were allowed to proceed, by managing agents of Defendants. Plaintiff is therefore entitled to recover punitive damages from Defendants in an amount according to proof at trial.

EIGHT CAUSE OF ACTION
HOSTILE WORK ENVIRONMENT HARASSMENT
(Against All Defendants Inclusive of DOES 1-25)

109. “Hostile environment” harassment occurs where the conduct interfered with the plaintiff’s employment or created an intimidating and offensive work environment. *Meritor Sav. Bank, FSB v. Vinson*, (1986) 477 U.S. 57. The effect on the employee's psychological well-being is relevant in determining whether plaintiff actually found the environment abusive. *Harris v. Forklift Systems, Inc.*, (1993) 510 U.S.17, 22; *Brooks v. City of San Mateo*, (9th Cir. 2000) 229 F.3d 917, 926.

110. Defendants continuously failed to accommodate Plaintiff's work restrictions or to assign him to an alternate vacant position for which Plaintiff could perform the essential duties, despite a specific request by Plaintiff for such accommodation. Defendants utterly refused to allow Plaintiff to continue working as a truck driver unless he returned with zero work restrictions.

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111. In addition, Defendants contacted Plaintiff while he was on medical leave and accused him of committing fraud. Defendants terminated Plaintiff's employment, while he was on medical leave, for alleged gross misconduct and integrity although he had been an exemplary employee for 14 years instead of accommodating him or engaging in the interactive process.

112. Ultimately, Plaintiff was terminated for trying to exercise his rights as an employee to seek accommodations for his disability.

113. As a direct and proximate result of the unlawful conduct of the Defendants, Plaintiff has suffered actual, consequential, and incidental damages, including without limitation, loss of regular employment and loss of career advancement opportunities in an amount subject to proof at trial.

114. As a direct and proximate result of the unlawful conduct of the Defendants, Plaintiff has suffered, and continues to suffer, substantial earnings and job benefits, in addition to humiliation, embarrassment, and mental and emotional distress in an amount exceeding jurisdictional limits, the precise amount of which is subject to proof at trial.

115. Defendant's acts were committed maliciously, fraudulently, and oppressively, with the wrongful intention of harming Plaintiff. Therefore, Plaintiff is entitled to punitive damages in amount subject to proof at trial.

116. Plaintiff will also seek and is entitled to recover attorney's fees in connection with this cause of action under Government Code section 12940 (j), *et seq.*

NINTH CAUSE OF ACTION

WRONGFUL TERMINATION IN VIOLATION OF PUBLIC POLICY

(Against All Corporate Defendants Inclusive of DOES 1-25)

117. Plaintiff re-alleges the information set forth in Paragraphs 1 through 116 above and incorporates these paragraphs into this cause of action as if they were fully alleged herein.

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1 118. At all times relevant to this Complaint, FEHA was in full force and effect
2 and binding upon Defendants. FEHA prohibits employers from discharging or
3 otherwise discriminating or retaliating against an employee on the basis of disability in
4 compensation, terms, conditions, or privileges of employment. Cal. Gov't Code §
5 12940(a).

6 119. It is “the public policy of this state that it is necessary to protect and
7 safeguard the right and opportunity of all persons to seek, obtain, and hold
8 employment without discrimination or abridgment on account of . . . physical
9 disability, mentally disability, [or] medical condition.” Cal. Gov't Code § 12920.

10 120. Defendants violated California public policy by terminating, and/or
11 constructively, Plaintiff’s employment because of his disability, and right to take
12 extended medical leaves. The termination was in violation of fundamental, substantial
13 public policies of this state, including, but not limited to the FEHA, CFRA, Title VII,
14 and FMLA.

15 121. As a direct and proximate result of the unlawful conduct of the
16 Defendants, Plaintiff has suffered actual, consequential, and incidental damages,
17 including without limitation, loss of regular employment and loss of career
18 advancement opportunities in an amount subject to proof at trial.

19 122. As a direct and proximate result of the unlawful conduct of the
20 Defendants, Plaintiff has suffered, and continues to suffer, substantial earnings and job
21 benefits, in addition to humiliation, embarrassment, and mental and emotional distress
22 in an amount exceeding jurisdictional limits, the precise amount of which is subject to
23 proof at trial.

24 123. Defendants' acts were committed maliciously, fraudulently, and
25 oppressively, with
26 the wrongful intention of harming Plaintiff. Therefore, Plaintiff is entitled to punitive
27 damages in amount subject to proof at trial.
28

1 124. Defendants' wrongful conduct has also necessitated the retention of legal
2 counsel to pursue Plaintiff's claims, the costs of which should be borne by Defendants.

3 **TENTH CAUSE OF ACTION**

4 **INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS**

5 **(Against All Defendants Inclusive of DOES 1-25)**

6 125. Plaintiff incorporates each allegation set forth in paragraphs 1 through
7 124, inclusive, and by this reference incorporates the same as though set forth in full
8 herein.

9 126. Defendants continuously failed to accommodate Plaintiff's work
10 restrictions or to assign him to an alternate vacant position for which Plaintiff could
11 perform the essential duties, despite a specific request by Plaintiff for such
12 accommodation. Defendants utterly refused to allow Plaintiff to continue working as
13 a truck driver unless he returned with zero work restrictions.

14 127. On March 27, 2018, while Plaintiff was on medical leave, SNYDER
15 called Plaintiff and accused him of fraud and told him that his employment was going
16 to be terminated because of gross misconduct and integrity. SNYDER called Plaintiff
17 in the presence of a third party, Plaintiff's supervisor, Lou Lacroix. Plaintiff asked
18 SNYDER if she had any proof of the fraud, but she denied having seen any evidence
19 to support her allegations.

20 128. Thereafter, OGUNLANA prepared Plaintiff's termination letter. In the
21 section titled "REASON FOR SEPARATION", OGUNLANA wrote in: "Gross
22 misconduct – Other" "Jesus was terminated involuntarily for gross misconduct and
23 integrity. OGUNLANA did not have any reason to believe these statements to be true.
24 As a result of these defamatory statements, on November 14, 2018, Plaintiff was forced
25 to explain to three perspective employments Defendants' reason for his termination,
26 which caused him to be denied employment opportunities.

27 129. Plaintiff was shocked by Defendants' defamatory allegations. However,
28 Plaintiff believes that the fraud allegations stem from his driving RV to the beach

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1 when he had restrictions for no commercial driving. These allegations where
 2 appalling because prior to these gross allegations, Plaintiff was seen as a high-
 3 ranking employee who would engage other employees within his leadership capacity.
 4 To this date, Plaintiff's supervisor cannot believe that Plaintiff was terminated
 5 because he was such an exemplary employee. Plaintiff went from a leader to a fraud
 6 for a company who he committed 14 years of his life to, all because he was injured
 7 and needed to be accommodated.

8 130. Defendants' mistreatment of Plaintiff and wrongful termination amounts
 9 to unreasonable conduct and was the direct and legal result of Plaintiff suffering
 10 emotional distress. Since Plaintiff's disability clearly put Defendants on notice, their
 11 actions to negligently address it are obvious. Despite all these efforts, Plaintiff was
 12 faced with callous responses that exacerbated the already existing stresses of work.

13 131. Defendants and each of their conduct stated hereinbefore was
 14 outrageous, intentional, and malicious and done for the purposes of causing or with
 15 reckless disregard of the probability of causing Plaintiff to suffer humiliation,
 16 mental anguish, and emotional and physical distress. The Employer Defendant and
 17 each of them failed to take proper measures to fulfill their legal obligations by
 18 creating a safe work environment, and a work environment free from harassment.

19 132. Conduct that might not otherwise immediately appear outrageous may
 20 become so if done by a person who (1) has actual or apparent power or authority
 21 over another, or power to affect the other's interests, (2) should know that the other
 22 is peculiarly susceptible to emotional distress because of a physical or mental
 23 condition or other circumstances, or (3) recognizes that his or her acts are likely to
 24 result in illness through mental distress. See 46 C3d at 1122; CACI 1602. See also
 25 *Angie M. v. Superior Court*, 37 Cal.App.4th 1217, 44 Cal.Rptr.2d 197 (1995)
 26 "special relationship" and "special susceptibility" are factors, but not requirements,
 27 in determining outrageousness.
 28

133. Here, Defendants and their agents had reason to know that refusing Plaintiff's work and terminating his health benefits would severely affect his health and cause immense amounts of stress. Moreover, they had reason to know that terminating Plaintiff for alleged gross misconduct and integrity would affect his prospective employment opportunities. This reckless disregard for someone's livelihood and health, reasonably added stress to Plaintiff's condition.

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center at an event in the Bentonville offices by his then-manager Jerry Jackson. One driver was selected by the general transportation manager from each distribution center around the country to attend this event. It was considered a high honor to be selected. It is inconceivable that Plaintiff went from being regarded as an extraordinary employee to a fraud.

136. The notion that someone possibly performing daily activities outside of their work restrictions amounts to fraud is preposterous. Yet, even if an employee with work restrictions inadvertently violates them, this does not amount to fraud in the workplace. In fact, Defendants' workers' compensation carrier has not disputed the validity of Plaintiff's injuries or claims. More importantly, Plaintiff has not suffered any denial of benefits or had any other negative consequence in his workers' compensation claim arising from any such alleged fraud.

137. Defendants' statements were false and unprivileged, and they directly impugned Plaintiff's character and honesty. Plaintiff was forced to republish these defamatory statements to third parties outside of Walmart by having to disclose them to three perspective employers to date. Plaintiff has already suffered the consequences of having this false information associated with his application for employment. In addition, Plaintiff was forced to republish these defamatory statements to his doctors.

138. Defendants' statements were malicious, oppressive and/or fraudulent and were undertaken with a conscious disregard of Plaintiff's rights. Accordingly, Plaintiff is entitled to punitive damages in an amount to be proven at trial.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment against defendant, and each of them, as follows:

1. For all actual, consequential, and incidental financial losses, including but not limited to, loss of earnings and employment benefits, together with

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- 1 prejudgment interest, according to proof;
- 2 2. For declaratory relief;
- 3 3. For compensatory, general, and special damages, including front pay, in
- 4 an amount according to proof;
- 5 4. For punitive damages;
- 6 5. For statutory attorneys' fees;
- 7 6. For prejudgment and post-judgment interest according to any applicable
- 8 provision of law, according to proof;
- 9 7. For costs of suit;
- 10 8. For expert witness fees pursuant to FEHA; and
- 11 9. For such other and further relief as the Court may deem just and proper.

12
13 Dated: May 28, 2019

ELDESSOUKY LAW, APC

14
15 By: 
16 Mohamed Eldessouky, Esq.
17 Attorneys for Plaintiff
18 **JESUS FONSECA**