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10 Attorneys for Plaintiff
11 **JESUS FONSECA**

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

14 JESUS FONSECA

15 Plaintiff,

16 v.

17 WAL-MART ASSOCIATES, INC., a
18 corporation; WALMART INC., a
19 corporation; TISHA SNYDER, an
20 individual; AISHA OGUNLANA, an
21 individual; and DOES 1 through 25,
22 inclusive

23 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(1)(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

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

4 **FACTS COMMON TO MORE THAN ONE CAUSE OF ACTION**

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

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

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

24 15. Plaintiff filed a workers’ compensation claim for his injuries resulting from
25 the accident shortly after. Starting June 26, 2017 through the time of his termination,
26 Plaintiff was evaluated by his doctor every few weeks and his work restrictions were
27 routinely modified. Plaintiff’s work restrictions varied, but for the most part they
28 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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1 the alleged fraud until March 27, 2018, when SNYDER called Plaintiff and accused
2 him of fraud and told him that his employment was going to be terminated because
3 of gross misconduct and integrity. SNYDER called Plaintiff in the presence of a
4 third party, Plaintiff’s supervisor, Lou Lacroix.

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

9 21. On March 29, 2018, OGUNLANA prepared Plaintiff’s termination letter.
10 In the section titled “REASON FOR SEPARATION”, OGUNLANA wrote: “Gross
11 misconduct – Other” “Jesus was terminated involuntarily for gross misconduct and
12 integrity.”

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

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

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

24 **FIRST CAUSE OF ACTION**

25 **DISABILITY DISCRIMINATION IN VIOLATION OF FEHA**

26 **(CAL. GOV'T CODE § 12940(a) et seq.)**

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

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

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

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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)

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

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

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

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

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

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

25 50. As a direct and proximate result of the unlawful conduct of the
26 Defendants, Plaintiff has suffered special damages, including, but not limited to, past
27 and future loss of income, benefits, and other damages to be proven at time of trial.
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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)).
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1 69. Specifically, Defendants failed to take any disciplinary measures to
2 prevent and/or remedy the discrimination against Plaintiff, such as issuing a formal
3 warning, providing counseling, or imposing probation, suspension, or termination, or
4 conducting a prompt and thorough investigation into Plaintiff's complaints of
5 discrimination and retaliation, that are the subject of this lawsuit.

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

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

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

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

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

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.

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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(I)(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.

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

7 107. As a result of the conduct of Defendants, Plaintiff was forced to retain an
8 attorney in order to protect his rights. Accordingly, Plaintiff seeks the reasonable
9 attorneys’ fees and costs incurred in this litigation in an amount according to proof at
10 trial.

11 **EIGHT CAUSE OF ACTION**
12 **HOSTILE WORK ENVIORNMENT HARASSMENT**
13 **(Against All Defendants Inclusive of DOES 1-25)**

14 108. Plaintiff re-alleges the information set forth in Paragraphs 1 through
15 107 above and incorporates these paragraphs into this cause of action as if they were
16 fully alleged herein.

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

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

28

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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 were
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

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

7 **TENTH CAUSE OF ACTION**

8 **DEFAMATION**

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

10 134. Plaintiff incorporates each allegation set forth in paragraphs 1 through
11 133, inclusive, and by this reference incorporates the same as though set forth in full
12 herein.

13 135. Plaintiff was falsely accused of gross misconduct and integrity. These
14 accusations were made without any reasonable belief in their truth and with malice.
15 When SNYDER called Plaintiff and informed him that he was being terminated for
16 gross misconduct and integrity and suspicion of fraud, Plaintiff asked SNYDER
17 what he had done wrong and asked if SNYDER had seen any proof of any alleged
18 fraud. SNYDER confirmed that she had not seen any proof. These allegations
19 were outrageous given that Plaintiff was an extraordinary employee. His yearly
20 performance reviews were always satisfactory and exceeded expectations. As a
21 result of Plaintiff’s hard work and safety practices, he received quarterly bonuses
22 throughout the entirety of his employment. In addition, Plaintiff received
23 numerous awards, including model safety trucks, certificates and annual safety belt
24 buckles. Also, Plaintiff was a leader in his department. He was involved in a
25 hiring committee, a safety committee, and a set run committee. Additionally,
26 Plaintiff trained drivers and was a mentor for approximately 12 drivers. What’s
27 more, Plaintiff was highly respected and admired for his work ethic. In fact, in or
28 around 2008, Plaintiff was selected to represent the Apple Valley distribution

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

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

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

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

PRAYER FOR RELIEF

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

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


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

Dated: May 28, 2019

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By: 
Mohamed Eldessouky, Esq.
Attorneys for Plaintiff
JESUS FONSECA