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5 v - 415-402-0084
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7 Attorney for Plaintiff
8 Jorge Vicente

9 **IN AND FOR THE SUPERIOR COURT OF THE STATE OF CALIFORNIA**
10 **FOR THE COUNTY OF SAN FRANCISCO**

11 JORGE VICENTE, an individual
12 Plaintiffs,
13 v.
14 CITY AND COUNTY OF SAN
15 FRANCISCO; and DOES 1-10, inclusive,
16 Defendants.

17 **Case No.:**
18 **COMPLAINT FOR DAMAGES,**
19 **DECLARATORY RELIEF, AND**
20 **INJUNCTIVE RELIEF FOR**
21 **VIOLATIONS OF:**
22 **(1) DISABILITY DISCRIMINATION**
23 **Cal. Gov. Code § 12900, et seq.**
24 **(2) FAILURE TO ENGAGE IN THE**
25 **INTERACTIVE PROCESS**
26 **Cal. Gov. Code § 12900, et seq.**
27 **(3) FAILURE TO ACCOMMODATE**
28 **Cal. Gov. Code § 12900, et seq.**
(4) RETALIATION
Cal. Gov. Code §12900 et. seq.
JURY TRIAL DEMANDED

29 Plaintiff JORGE VICENTE (“Plaintiff” or “VICENTE”), complains against Defendants
30 and each of them as follows:

31 **INTRODUCTION**

32 1. This is a civil action seeking damages, injunctive relief, and other equitable relief under

1 the California Family Rights Act (“CFRA”) (Cal. Gov. Code § 12945.2, et. seq.) and the
2 California Fair Employment and Housing Act (“FEHA”) (Cal. Gov. Code § 12900, et seq.).

3 2. Plaintiff alleges that Defendant CITY AND COUNTY OF SAN FRANCISCO
4 (“Defendant” or “CCSF”) violated CFRA and the FEHA by refusing to return Plaintiff to work
5 after he prevailed at an Arbitration contesting his wrongful termination based on pretextual
6 reasons.

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8 **JURISDICTION & VENUE**

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10 3. This Court has subject matter jurisdiction as the aggregate amount of damages exceeds
11 \$25,000, and personal jurisdiction over Defendant under Cal. Code. Civ. Proc. § 410.10, in that
12 Defendant resides and/or does business in the State of California, or otherwise has the requisite
13 minimum contacts with the State such as to justify this Court exercising jurisdiction over it.

14 4. Venue as to Defendant is proper in this judicial district because CCSF resides and/or does
15 business in the County of San Francisco, State of California.

16 5. Plaintiff has been damaged in excess of the jurisdictional amount of this Court.

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18 **THE PARTIES**

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20 6. Plaintiff Jorge Vicente is an individual hired by CCSF in August 1990.

21 7. Defendant CCSF is a municipality organized and existing under the laws of the State of
22 California.

23 8. Plaintiff is ignorant of the true names and capacities of defendants sued herein as Does 1-
24 10, inclusive, and Plaintiff therefore sues such defendants by such fictitious names. Plaintiff will
25 amend this complaint to allege their true names and capacities when ascertained. Plaintiff is
26 informed and believes and thereon alleges that each of these fictitiously named defendants is
27 responsible in some manner for the occurrences, acts, and omissions alleged herein and that
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1 Plaintiff's injuries as alleged herein were proximately caused by such aforementioned
2 defendants.

3 9. Plaintiff is informed and believes and thereon alleges that at all times mentioned herein,
4 each of the defendants was acting as the partner, agent, servant, and employee of each remaining
5 defendant, and in doing the things alleged herein was acting within the course and scope of such
6 agency and with the knowledge of the remaining defendants, and that each defendant is
7 responsible for the occurrences, acts, and omissions of each other defendant complained of
8 herein.
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10 **FACTS COMMON TO ALL CAUSES OF ACTION**
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12 10. In January 2014, Vicente was informed he was being terminated for alleged misconduct.

13 11. On July 8, 2016, Mr. Vicente was successful in arbitration against the San Francisco
14 Public Utilities Commission due to it's unlawful termination of Mr. Vicente.

15 12. The arbitration award ordered the City and County of San Francisco to return Mr.
16 Vicente back to work at the San Francisco Public Utilities Commission.
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18 13. The above-referenced matter derives from an arbitration award issued on July 8, 2016.
19 That award ordered the Employer to reinstate Grievant Jorge Vicente and pay approximately
20 fourteen months of back pay and benefits
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22 14. In the arbitration proceeding, the parties stipulated that the arbitrator would retain
23 jurisdiction over the implementation of the remedy. Subsequent to the parties receiving the
24 award, they were unable to agree on the implementation of the remedy.

25 15. On July 19, 2016, San Francisco PUC HR representative Rachel Gardunio called Mr.
26 Vicente and stated that since he won the arbitration award and that he will be returning to work,
27 he should come to the HR office and fill out paperwork to get the process started.
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1 16. During this call, Mr. Vicente requested a psychological and physical evaluation before
2 returning to work. He requested that PUC HR only communicate with Mr. Vicente's attorney in
3 effectuating his return to the PUC.

4 17. Aside from the July 19, 2016 call, neither Ms. Gardunio, nor any other PUC HR
5 representative contacted Mr. Vicente's attorneys in order to schedule both a psychological nor a
6 physical evaluation.

7 18. The PUC HR department also never contacted Mr. Vicente to schedule evaluations.

8 19. The reason Mr. Vicente was requesting an evaluation was because his
9 psychiatrist/medical health care provider diagnosed him with Post-Traumatic Stress Disorder
10 (“PTSD”) due to CCSF's termination of his employment and that Mr. Vicente was unable to
11 pursue work in any setting.

12 20. Mr. Vicente began seeing the psychiatrist in 2014 due to the stress and anxiety he
13 experienced due to his unlawful termination.

14 21. In or around the end of August 2016, Mr. Vicente, contacted SF PUC's HR department
15 requesting when his benefits would be reinstated and when he would receive his back-pay.

16 22. On or about September 8, 2016, the firm representing Mr. Vicente sent another email
17 requesting when he would receive his benefits and back-pay based on the arbitration award.

18 23. On or about September 21, 2016, SF City Attorney Sallie Gibson sent a letter to Mr.
19 Vicente's counsel in response to his August and September 2016 letters. Ms. Gibson claimed
20 that the City was prepared to return Mr. Vicente back to work immediately but that he needed
21 to contact Ms. Gardunio in HR.

22 24. However, Mr. Vicente already contacted HR two months prior and requested an
23 evaluation before returning to work.
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1 25. Approximately three months passed before CCSF communicated with Mr. Vicente
2 regarding returning him to work.

3 26. On January 27, 2017, Ms. Gardunio sent a letter to Mr. Vicente.

4 27. Gardunio ignored the fact that the reason Mr. Vicente was not returning to work
5 immediately after the arbitration award was because he needed a psychological and physical
6 examinations.

7 28. In this January 27, 2017 letter, CCSF arbitrarily set a return to work date for February 7,
8 2017.

9 29. Ms. Gardunio advised Mr. Vicente that if he needed a reasonable accommodation in
10 order to return to work, that he should fill out an attached ADA Reasonable Accommodation
11 request form, a medical release authorization form and to return them to the HR department.

12 30. Again, the City did not mention anything about scheduling evaluations for Vicente.

13 31. Mr. Vicente's attorney emailed the City stating that Mr. Vicente would not be returning to
14 work on February 7, 2017 due to him preparing for the remedy hearing before the arbitrator.

15 32. On February 1, 2017, Ms. Gardunio sent second return to work notice to Mr. Vicente
16 stating that since he will not be returning on February 7, 2017, his new return to work date
17 would be February 13, 2017.

18 33. Ms. Gardunio again included the ADA Reasonable Accommodation request form.

19 34. However, Ms. Gardunio, again, failed to discuss Mr. Vicente's request for psychiatric and
20 physical evaluations.

21 35. The next day, Mr. Vicente's attorneys sent a letter to Ms. Gardunio informing her that Mr.
22 Vicente is unable to return to work on February 13, 2017 with reasonable accommodations and
23 that he will provide a note from his doctor by the end of the week.
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1 36. Mr. Vicente completed the ADA paperwork and submitted it to the City's representative
2 on February 9, 2017 at the remedy hearing.

3 37. The parties then requested that a hearing be convened so that the remedy could be
4 decided by the arbitrator. The matter was heard on February 9, 2017 and March 7, 2017 in San
5 Francisco, California.

6 38. While the termination grievance arose under the terms and conditions of a collective
7 bargaining agreement between the Employer and Operating Engineers Local 3 (the "Union"),
8 the Grievant chose to be represented by private counsel.

9 39. On June 15, 2017, the Arbitrator ruled that Mr. Vicente should be compensated and
10 returned to work.

11 40. In his ruling the Arbitrator instructed CCSF to return Mr. Vicente to work on September
12 1, 2017.

13 41. Prior to returning to work Vicente became aware of efforts at the PUC to attempt to fill
14 his position.

15 42. Vicente objected to this illegal attempt to fill his position and requested that CCSF
16 intervene and ensure that this does not occur, as that would clearly violate the arbitration award.

17 43. On August 15, 2017, Vicente submitted a request for accommodation requesting that his
18 leave be extended an additional 120 days to allow sufficient time for he and CCSF to engage in
19 the interactive process.

20 44. On September 11, 2017, Vicente returned to work and continued to request the
21 opportunity to engage in the interactive process with CCSF.

22 45. Instead, CCSF kept Vicente out of work for approximately one year after the Arbitrator
23 instructed CCSF to do so.
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1 46. On June 12, 2018 Plaintiff, obtained a Right to Sue from the California Department of
2 Fair Employment and Housing (“DFEH”).

3 WHEREFORE, Plaintiff has been damaged and prays judgment as set forth below.
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5 **FIRST CAUSE OF ACTION**
6 **DISABILITY DISCRIMINATION**
7 **(Cal. Gov. Code § 12900, et seq.)**

8 47. As a first, separate and distinct cause of action, Plaintiff alleges as follows:

9 48. The factual allegations of Paragraphs 1 through 46 above, are re-alleged and incorporated
10 herein by reference.

11 49. Cal. Gov. Code § 12940(a) provides that it is an unlawful employment practice for an
12 employer, because of the physical disability of any person to bar or to discharge the person from
13 employment or from a training program leading to employment, or to discriminate against the
14 person in compensation or in terms, conditions, or privileges of employment,
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16 50. Plaintiff suffers from a mental condition that limited his major life activities and is part
17 of a protected class under the FEHA: he suffers from PTSD.

18 51. As alleged above, Plaintiff was impaired in one or more of the following major life
19 activities, including working and maintaining mental clarity.

20 52. As demonstrated above, Plaintiff performed the duties of his job competently, and at the
21 time he suffered the adverse employment action set forth above, was qualified to perform the
22 essential duties of his position with or without reasonable accommodation
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24 53. Defendant, through its agents and employees, engaged in a pattern and practice of
25 unlawful disability discrimination in violation of FEHA in connection with its disparate
26 treatment of Plaintiff, and the terms and conditions of his employment. Based on information
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1 and belief, employees of Defendants similarly situated to Plaintiff but outside of his protected
2 class were not disciplined and/or precluded from working.

3 54. At all relevant times, Defendant and its supervisors, agents, and/or officers, engaged in
4 and/or ratified by their actions and/or inaction through their employees and/or supervisors, acts
5 of discrimination against Plaintiff based upon his protected class.

6 55. As a direct result of the acts and conduct of Defendants as alleged herein, Plaintiff
7 has suffered a loss of earnings and related employment benefits in an amount to be proven at
8 trial herein.

10 56. As a direct and proximate result of the willful, knowing, and intentional discrimination
11 against him, Plaintiff has suffered mental distress, anguish, and indignation. He is thereby
12 entitled to general and compensatory damages in an amount to be proven at trial.

13 57. As set forth above, Plaintiff has duly exhausted all administrative remedies pertinent to
14 this cause of action.

16 WHEREFORE, Plaintiff has been damaged and prays judgment as set forth below.

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18 **SECOND CAUSE OF ACTION**
19 **FAILURE TO ENGAGE IN THE INTERACTIVE PROCESS**
20 **(Cal. Gov. Code § 12900, et seq.)**

21 58. As a second, separate and distinct cause of action, Plaintiff alleges as follows:

22 59. The factual allegations of Paragraphs 1 through 57 above, are re-alleged and incorporated
23 herein by reference.

24 60. Jurisdiction is invoked pursuant to Cal. Gov. Code § 12965, seeking a declaratory
25 judgment, injunctive and damages for violations of the Plaintiff employment rights as protected
26 by Cal. Gov. Code § 12900, et seq., which reserves an employee's right to a good faith
27 investigation into whether a reasonable accommodation could be implemented.
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1 61. Plaintiff suffers from a mental condition that limited his major life activities and is part
2 of a protected class under the FEHA: he suffers from PTSD.

3 62. Plaintiff was willing to participate in an interactive process to determine whether
4 reasonable accommodations could be made so that he would be able to perform the essential job
5 functions.

6 63. Instead of engaging in the interactive process and providing a reasonable
7 accommodation, CCSF refused to allow Plaintiff to return to the workforce.
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9 64. Defendant failed to participate in a timely good-faith interactive process with Plaintiff to
10 determine whether reasonable accommodations could be made.

11 65. At all relevant times, Defendant and its supervisors, agents, and/or officers, engaged in
12 and/or ratified by their actions and/or inaction through their employees and/or supervisors, acts
13 of discrimination against Plaintiff based upon his protected class.
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15 66. As a direct result of the acts and conduct of Defendant as alleged herein, Plaintiff
16 has suffered a loss of earnings and related employment benefits in an amount to be proven at
17 trial herein.

18 67. As a direct and proximate result of the willful, knowing, and intentional discrimination
19 against him has suffered mental distress, anguish, and indignation. He is thereby entitled to
20 general and compensatory damages in an amount to be proven at trial.
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22 68. As set forth above, Plaintiff has duly exhausted all administrative remedies pertinent to
23 this cause of action.

24 WHEREFORE, Plaintiff has been damaged and prays judgment as set forth below.

25 **THIRD CAUSE OF ACTION**
26 **FAILURE TO ACCOMMODATE**
27 **(Cal. Gov. Code § 12900, et seq.)**

28 69. As a third, separate and distinct cause of action, Plaintiff alleges as follows:

1 70. The factual allegations of Paragraphs 1 through 68 above, are re-alleged and
2 incorporated herein by reference.

3 71. Jurisdiction is invoked pursuant to Cal. Gov. Code § 12965, seeking a declaratory
4 judgment, injunctive and damages for violations of the Plaintiff employment rights as protected
5 by Cal. Gov. Code § 12900, et seq., which reserves an employee's right to a good faith
6 investigation into whether a reasonable accommodation could be implemented.

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8 72. Plaintiff suffers from a mental condition that limited his major life activities and is part
9 of a protected class under the FEHA: he suffers from PTSD.

10 73. Instead of providing a reasonable accommodation, Defendant precluded Plaintiff from
11 returning to work for a year

12 74. At all relevant times, Defendant and its supervisors, agents, and/or officers, engaged in
13 and/or ratified by their actions and/or inaction through their employees and/or supervisors, acts
14 of discrimination against Plaintiff based upon his protected class.

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16 75. As a direct result of the acts and conduct of Defendant as alleged herein, Plaintiff has
17 suffered a loss of earnings and related employment benefits in an amount to be proven at trial
18 herein.

19 76. As a direct and proximate result of the willful, knowing, and intentional discrimination
20 against him, Plaintiff has suffered mental distress, anguish, and indignation. He is thereby
21 entitled to general and compensatory damages in an amount to be proven at trial.

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23 77. As set forth above, Plaintiff has duly exhausted all administrative remedies pertinent to
24 this cause of action.

25 WHEREFORE, Plaintiff has been damaged and prays judgment as set forth below.

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**FOURTH CAUSE OF ACTION
RETALIATION
(Cal. Gov. Code § 12900, et seq.)**

78. As a fourth, separate and distinct cause of action, Plaintiff alleges as follows:

79. The factual allegations of Paragraphs 1 through 77 above, are re-alleged and incorporated herein by reference.

80. Plaintiff engaged in protected activities, to wit, filing complaints of hostile work environment and discrimination in the workplace with the EEOC and DFEH in late 2015.

81. Defendant engaged in a pattern and practice of ignoring the complaints of discrimination and hostile work environment.

82. In retaliation for the filing of those complaints of discrimination, Defendant kept Plaintiff out of work in violation of an arbitration award ordering him to be returned to work.

83. Plaintiff's protected activities were a substantial motivating factor in Defendant's refusal to return Plaintiff to work, its refusal to pay Plaintiff, and its failure to engage in the interactive process, and accommodate Plaintiff.

84. At all relevant times, Defendant and its supervisors, agents, and/or officers, engaged in and/or ratified by their actions and/or inaction through their employees and/or supervisors, acts of discrimination against Plaintiff based upon his protected class.

85. As a direct result of the acts and conduct of Defendant as alleged herein, Plaintiff has suffered a loss of earnings and related employment benefits in an amount to be proven at trial herein.

86. As a direct and proximate result of the willful, knowing, and intentional discrimination against him, Plaintiff has suffered mental distress, anguish, and indignation. He is thereby entitled to general and compensatory damages in an amount to be proven at trial.

1 87. As set forth above, Plaintiff has duly exhausted all administrative remedies pertinent to
2 this cause of action.

3 WHEREFORE, Plaintiff has been damaged and prays judgment as set forth below.

4 **PRAYER FOR RELIEF**

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6 WHEREFORE, Plaintiff prays for relief as follows:

- 7 1. For a mandatory injunction requiring Defendant to re-train its management and
8 individuals concerning retaliation, accommodations, and the interactive process, and the
9 establishment of protocols and procedures to remedy the pattern and practice of
10 retaliation;
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12 2. For general damages in amounts according to proof and in no event in an amount less
13 than the jurisdictional limit of this Court;
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15 3. For special damages in amounts according to proof;
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17 4. For attorneys' fees as provided by law;
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19 5. For prejudgment interest and post-judgment interest where warranted;
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21 6. For costs of suit herein; and;
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23 7. For such other and further relief as the Court deems fair and just.

24 Dated: June 11, 2019

SMITH PATTEN

25 by:

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DOW W. PATTEN
Attorney for Plaintiff

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JURY DEMAND

Plaintiff demands trial by jury of all matters so triable.

Dated: June 11, 2019

SMITH PATTEN

by: _____
DOW W. PATTEN
Attorney for Plaintiff