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**FILED**  
Superior Court of California  
County of Alameda

07/28/2022

Clad Flake, Executive Officer / Clerk of the Court

By: A. Linhares Deputy

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF ALAMEDA

(Unlimited Jurisdiction)

FRANCISCO TORRES de la ROSA,

Plaintiff,

v.

PACIFICA FOUNDATION, INC. dba KPFA  
94.1 FM, MARK MERICLE, and DOES 1  
through 10, inclusive,

Defendants.

Civ. No. 22CV011168

FIRST AMENDED COMPLAINT FOR  
DAMAGES AND FOR INJUNCTIVE  
RELIEF

REQUEST FOR JURY TRIAL

1. SEXUAL HARASSMENT;  
2. FAILURE TO PREVENT SEXUAL  
HARASSMENT;  
3. NATIONAL ORIGIN  
DISCRIMINATION;  
4. NATIONAL ORIGIN HARASSMENT;  
5. FAILURE TO PREVENT NATIONAL  
ORIGIN DISCRIMINATION AND  
HARASSMENT;  
6. DISABILITY DISCRIMINATION;  
7. FAILURE TO ENGAGE IN THE  
INTERACTIVE PROCESS;  
8. FAILURE TO PROVIDE REASONABLE  
ACCOMMODATION;  
9. FAILURE TO PREVENT DISABILITY  
DISCRIMINATION;  
10. RETALIATION IN VIOLATION OF  
THE FAIR EMPLOYMENT AND  
HOUSING ACT;

11. RETALIATION IN VIOLATION OF  
LABOR CODE SECTION 1102.5;  
12. VIOLATION OF RALPH ACT, CIVIL.  
CODE SECTION 51.7;  
13. SEXUAL BATTERY – VIOLATION OF  
CIVIL CODE SECTION 1708.5;  
14. WRONGFUL CONSTRUCTIVE  
TERMINATION IN VIOLATION OF  
PUBLIC POLICY – FEHA;  
15. WRONGFUL CONSTRUCTIVE  
TERMINATION – SEXUAL BATTERY,  
CIV. CODE §1708.5.;  
16. WRONGFUL CONSTRUCTIVE  
TERMINATION IN VIOLATION OF LAB.  
CODE SECTION 1102.5; and  
17. NEGLIGENT HIRING/SUPERVISION/  
RETENTION

### **INTRODUCTION**

In or about November 2015, Pacifica Foundation, Inc. dba KPFA 94.1 FM hired Francisco Torres de la Rosa as a maintenance worker. Mr. Torres was an excellent employee, hard - working and loyal. During his employment Mr. Torres was subjected to repeated acts of sexual harassment by Director Mark Mericle, including forcible and unwanted touching and sexual assaults, leering, staring, blocking and verbal abuse. These actions constituted a continuing violation. Mr. Mericle targeted Mr. Torres for this harassment and abuse because of his gender, male, and national origin, Mexico.

When Mr. Torres reported the sexual harassment and assaults to his supervisor, she ignored him. When he complained again, her response was, “well, he’s gay.” Mr. Torres then went to the General Director, who told Mr. Torres that he had to “get along with everyone.”

1 When he went to Human Resources for help, they advised Mr. Torres that the company wasted a  
2 lot of money doing an investigation of his complaints. Mr. Torres became distraught over the  
3 sexual harassment and assaults, and the company's refusal to stop them. He even had suicidal  
4 thoughts. Mr. Torres begged Pacifica to help him, asking Pacifica Foundation to provide him  
5 with counseling to help him deal with the emotional trauma caused by the sexual harassment and  
6 assaults. Pacifica refused. Despite Mr. Torres' numerous complaints, the company took no  
7 effective remedial action. Instead, Pacifica cut Mr. Torres' hours and pay.

8  
9 In May 2021, Mr. Torres hired an attorney who filed a DFEH charge. Mr. Torres' attorney  
10 served the complaint on both the company and Mr. Mericle by certified mail. Within days,  
11 Pacifica banned Mr. Torres from the building where he worked and since then, has denied him  
12 further employment. Pacifica asserts that it did so because Mr. Torres has work restrictions as a  
13 result of a work injury, causing him physical disabilities. However, without speaking to Mr.  
14 Torres, Pacifica determined that it was "unable" to accommodate him. The company made this  
15 determination without engaging in the interactive process with Mr. Torres and without offering  
16 Mr. Torres reasonable accommodations to his work injuries and disabilities.

17  
18 Plaintiff alleges that Defendants subjected him to unlawful sexual harassment, hostile  
19 work environment harassment, sexual assaults, and denied him employment and pay without  
20 engaging in the interactive process or offering him reasonable accommodation of his disability  
21 related work restrictions.

## 22 **JURISDICTION AND VENUE**

23  
24 1. This Court has jurisdiction of this action because the alleged wrongful and discriminatory  
25 conduct occurred at a place of employment situated in the City of Berkeley and the County of  
26 Alameda, in the State of California.  
27  
28

**PARTIES**

2. Plaintiff Francisco Torres de la Rosa (hereafter referred to as “Mr. Torres” or Plaintiff) was hired by Defendant Pacifica Foundation, Inc. dba KPFA 94.1 FM (hereafter referred to as “Pacifica”) in November 2015, as a Maintenance Worker. Plaintiff’s work was always satisfactory.

3. At all material times, Plaintiff was an employee within the meaning of the Fair Employment and Housing Act, California Government Code section 12940 subdivision (a), and which obligates employers to refrain from sexual harassment, retaliation, and disability discrimination. It also requires employers to engage in the good faith interactive process and to provide reasonable accommodation to known disabilities of its employees.

4. Defendant Pacifica Foundation, Inc. (“Pacifica Foundation, Inc.”) operates radio stations throughout California, including station KPFA FM in Berkeley, California, where Plaintiff was employed. At all material times, Defendant Pacifica employed more than five employees, and as such, is an employer within the meaning of the Fair Employment and Housing Act.

5. Defendant Mark Mericle is a male employee, employed by Pacifica as a Director at KPFA FM in Berkeley, California.

6. The true names or capacities, whether individual, corporate, associate or otherwise, of Defendant Does 1 to 10, inclusive, are unknown to Plaintiff, who therefore sues said Defendants by such fictitious names. Plaintiff is informed and believes and thereon alleges that each of the Defendants designated herein as Doe is legally responsible in some manner (as the agent, partner and/or employee of a co-defendant) for the events and happenings herein referred to and in doing the actions mentioned below was acting individually and as an agent of the other Defendants, and with their permission and consent. All actions of each Defendant herein alleged were

1 ratified and approved by the other individual Defendants and by the officers and managing  
2 agents of each corporate Defendant and partnership.

3 **FACTS COMMON TO ALL CAUSES OF ACTION**  
4

5 7. Plaintiff Francisco Torres is a 54-year-old married man with two children. He was born  
6 in Mexico and primarily speaks Spanish, with limited English skills.

7 8. Pacifica hired Mr. Torres as a Maintenance worker in or about November 2015.

8 9. Plaintiff's performance was excellent.

9  
10 10. Beginning in or about 2019, Defendant Pacifica's Director, Mark Mericle, began making  
11 unwelcome sexual advances and sexual assaults directed at Mr. Torres. Mr. Mericle targeted Mr.  
12 Torres because of his national origin, Mexico, and his limited English skills.

13 11. Mr. Mericle repeatedly crept up behind Mr. Torres and grabbed his buttocks. When  
14 Plaintiff recoiled in shock and horror, Mr. Mericle laughed and walked away.

15  
16 12. Mr. Torres complained to his supervisor, who ignored his complaints. When he  
17 complained again, she merely replied, "well, he's gay," in reference to Mr. Mericle.

18 13. Despite Mr. Torres' complaints, Mr. Mericle continued to sexually harass Mr. Torres,  
19 with unwanted physical sexual assaults, by staring and leering at Mr. Torres in the workplace,  
20 following him to the restroom and blocking him from leaving.

21  
22 14. Mr. Torres sought help from Pacifica to prevent Mericle from further sexually assaulting  
23 him, but Pacifica refused to take prompt, remedial action as required by law.

24 15. Mr. Torres also asked the company to provide him with counseling to help him deal with  
25 the emotional trauma he experienced after he was subjected to the sexual harassment and  
26 assaults, but Pacifica refused  
27  
28

1 16. After reporting the sexual harassment and assaults, Mr. Torres was subjected to a series  
2 of retaliatory acts, including Pacifica cutting his work hours and eliminating overtime.

3 17. In or about May 2021, Plaintiff's counsel filed a charge of discrimination and sexual  
4 harassment with the DFEH, and served it on Pacifica and Mr. Mericle in late May 2021.  
5

6 18. Within days, on June 14, 2021, Pacifica barred Mr. Torres from entering the workplace  
7 and told him to leave and not return to work.

8 19. Pacifica claimed that it did so because it could not accommodate Mr. Torres' medical  
9 restrictions imposed by his doctor due to work- related injuries to his back, neck, and arms.  
10

11 20. Mr. Torres is a qualified individual with disabilities stemming from a fall at work,  
12 resulting in injuries and musculoskeletal disabilities. These disabilities affect his ability to lift,  
13 bend and work. Mr. Torres also suffers from depression, a mental disability, as a result of his  
14 mistreatment at Pacifica.  
15

16 21. Pacifica never engaged in the interactive process with Mr. Torres.

17 22. Pacifica did not provide or explore reasonable accommodations for Mr. Torres to  
18 continue working.

19 23. Pacifica could have accommodated Mr. Torres' disabilities without undue hardship.  
20

21 24. Since June 2021, Mr. Torres has been denied income and employment from Defendant.

22 25. Plaintiff was targeted for sexual harassment, assaults, retaliation, and other  
23 discriminatory treatment because of his gender, male and his national origin, Mexico, as well as  
24 his disabilities.  
25  
26  
27  
28

**(Sexual Harassment in Violation of**

As to all Defendants Plaintiff alleges:

Accordingly, Plaintiff seeks an award of punitive and exemplary damages against Defendants.

1 33. As a direct result of the acts alleged above, Plaintiff has had to hire the services of an  
2 attorney. As a result, Plaintiff has incurred and continues to incur legal expenses and attorneys'  
3 fees, and is entitled to an award of attorneys' fees and costs pursuant to Government Code  
4 section 12965(b).  
5

6 **SECOND CAUSE OF ACTION**

7 **(Failure to Prevent Sexual Harassment**

8 **in Violation of the California Fair Employment and Housing Act)**

9 As to Defendant Pacifica Foundation, Inc., Plaintiff alleges:  
10

11 34. The allegations set forth in the preceding paragraphs are realleged and incorporated  
12 herein by reference as though fully set forth herein.

13 35. At all times herein mentioned, Government Code section 12940, subdivisions (j) (1) and  
14 (k) were in full force and effect and were binding on Defendant Pacifica Foundation, Inc. These  
15 subsections require Defendant Pacifica Foundation, Inc. to take all reasonable steps to prevent  
16 sexual harassment from occurring.  
17

18 36. The actions of Defendant Pacifica, as described more fully above, constitute sexual  
19 harassment and failure to prevent sexual harassment in violation of Government Code section  
20 12940, subdivisions (j) (1) and (k).  
21

22 37. On May 17, 2021, within the time provided by law, Plaintiff caused to have filed a charge  
23 with the California Department of Fair Employment and Housing ("DFEH"), alleging sexual  
24 harassment against Defendant. The DFEH issued a right-to-sue notice against Defendant dated  
25 May 17, 2021.  
26  
27  
28



1 38. As a proximate result of Defendant Pacifica's willful, knowing, and intentional acts of  
2 discrimination against Plaintiff, Plaintiff has sustained losses in earnings and other employment  
3 benefits.

4  
5 39. As a proximate result of Defendant Pacifica's willful, knowing, and intentional  
6 discrimination and harassment against him, Plaintiff suffered emotional distress and mental pain  
7 and anguish.

8 40. Defendant Pacifica's conduct, as described above, was willful, knowing, and intentional.  
9 Accordingly, Plaintiff seeks an award of punitive and exemplary damages against Defendant  
10 Pacifica Foundation, Inc.

11  
12 41. As a direct result of the acts alleged above, Plaintiff has had to hire the services of an  
13 attorney. As a result, Plaintiff has incurred and continues to incur legal expenses and attorneys'  
14 fees, and is entitled to an award of attorneys' fees and costs pursuant to Government Code  
15 section 12965(b).

16  
17 **THIRD CAUSE OF ACTION**

18 **(National Origin Discrimination in Violation of the**  
19 **California Fair Employment and Housing Act)**

20 As to Defendant Pacifica, Plaintiff alleges:

21  
22 42. The allegations set forth in the preceding paragraphs are realleged and incorporated  
23 herein by reference as though fully set forth herein.

24 43. At all times herein mentioned, California Government code Section 12940 subdivision  
25 (a) was in full force and effect and was binding on Defendant Pacifica. This subsection requires  
26 Defendant to refrain from discriminating against employees because of national origin.  
27  
28

1 44. The acts of Defendant Pacifica, as described more fully above constitutes national origin-  
2 based discrimination in violation of Government Code Section 12940, subdivisions (a) and (j).

3 45. On or about May 17, 2021, within the time provided by law, Plaintiff caused to have filed  
4 a charge with the California Department of Fair Employment and Housing (“DFEH”), alleging  
5 national origin discrimination against Defendant. The DFEH issued the requisite right to sue  
6 notice immediately on May 17, 2021.

7  
8 46. As a proximate result of Defendant’s willful, knowing, and intentional acts of  
9 discrimination against him, Plaintiff has sustained losses in earnings and other employment  
10 benefits.

11  
12 47. As a proximate result of Defendant’s willful, knowing, and intentional acts of  
13 discrimination against him, Plaintiff has suffered and continues to suffer emotional distress and  
14 mental pain and anguish.

15  
16 48. Defendants’ conducts, as described above, was willful, knowing, and intentional.  
17 Accordingly, Plaintiff seeks an award of punitive and exemplary damages against Defendant.  
18 Defendant committed the acts herein alleged maliciously, fraudulently, and oppressively with the  
19 wrongful intention of injuring Plaintiff, from an improper and evil motive amounting to malice,  
20 and in conscious disregard of his rights. Such conduct was carried out, authorized and/or ratified  
21 by a director or managing agent of Defendant.

22  
23 49. As a direct result of Defendant’s conduct alleged above, Plaintiff has had to hire the  
24 services of an attorney and he has incurred, and continues to incur, legal expenses and attorneys’  
25 fees. Plaintiff is entitled to an award of attorneys’ fees and costs pursuant to California  
26 Government Code Section 12965(b).

1 **FOURTH CAUSE OF ACTION**

2 **(National Origin Harassment in Violation of**  
3 **California Fair Employment and Housing Act)**  
4

5 As to all Defendants, Plaintiff alleges:

6 50. The allegations set forth in the preceding paragraphs are realleged and incorporated  
7 herein by reference as though fully set forth herein.

8 51. At all times herein mentioned, California Government Code Section 12940 subdivisions  
9 (j)(1) was in full force and effect and was binding on Defendants. This subsection requires  
10 Defendants to refrain from harassing employees and co-workers because of their national origin.  
11

12 52. The acts of Defendants, as described more fully above constitute national origin-based  
13 harassment in violation of Government Code Section 12940, subdivision (j)(1).

14 53. Within the time provided by law, Plaintiff caused to have filed a charge of discrimination  
15 with the California Department of Fair Employment and Housing ("DFEH"), alleging national  
16 origin harassment against Defendants. The DFEH issued the requisite right to sue notice.  
17

18 54. As a proximate result of Defendants' willful, knowing, and intentional acts of harassment  
19 against him, Plaintiff has sustained losses in earnings and other employment benefits.  
20

21 55. As a proximate result of Defendants' willful, knowing, and intentional acts of harassment  
22 against him, Plaintiff has suffered and continues to suffer emotional distress and mental pain and  
23 anguish.

24 56. Defendants' conducts, as described above, was willful, knowing, and intentional.  
25 Accordingly, Plaintiff seeks an award of punitive and exemplary damages against Defendants.  
26 Defendants committed the acts herein alleged maliciously, fraudulently, and oppressively with  
27 the wrongful intention of injuring Plaintiff, from an improper and evil motive amounting to  
28

malice, and in conscious disregard of his rights. Such conduct was carried out, authorized and/or ratified by a director or managing agent of Defendants.

57. As a direct result of Defendants' conduct alleged above, Plaintiff has had to hire the services of an attorney and he has incurred, and continues to incur, legal expenses and attorneys' fees. Plaintiff is entitled to an award of attorneys' fees and costs pursuant to California Government Code Section 12965(b).

### **FIFTH CAUSE OF ACTION**

#### **( Failure to Prevent National Origin Discrimination and Harassment in Violation of California Fair Employment and Housing Act)**

As to Defendant Pacifica, Plaintiff alleges:

58. The allegations set forth in the preceding paragraphs are realleged and incorporated herein by reference as though fully set forth herein.

59. At all times herein mentioned, Government code section 12940 subdivision (a) and (k) were in full force and effect and were binding on Defendant Pacifica. These subsections require Defendant to refrain from discriminating against and harassing employees because of national origin and to take all reasonable steps to prevent national origin discrimination and harassment from occurring.

60. The acts of Defendants, as described more fully above, constitute national origin-based discrimination and harassment in violation of Government Code Section 12940, subdivisions (a), (j) (1) and (k).

61. On or about May 17, 2021, within the time provided by law, Plaintiff caused to have filed a charge of discrimination with the California Department of Fair Employment and Housing

1 (“DFEH”), alleging national origin discrimination and harassment against Defendants. The  
2 DFEH issued the requisite immediate right to sue notice on May 17, 2021.

3 62. As a proximate result of Defendant’s willful, knowing, and intentional acts of  
4 discrimination and harassment against him, and failure to prevent same, Plaintiff has sustained  
5 losses in earnings and other employment benefits.  
6

7 63. As a proximate result of Defendant’s willful, knowing, and intentional acts of  
8 discrimination and harassment against him, and failure to prevent same, Plaintiff has suffered  
9 and continues to suffer emotional distress and mental pain and anguish.  
10

11 64. Defendant’s conduct, as described above, was willful, knowing, and intentional.  
12 Accordingly, Plaintiff seeks an award of punitive and exemplary damages against Defendant.  
13 Defendant committed the acts herein alleged maliciously, fraudulently, and oppressively with the  
14 wrongful intention of injuring Plaintiff, from an improper and evil motive amounting to malice,  
15 and in conscious disregard of his rights. Such conduct was carried out, authorized and/or ratified  
16 by an owner, director or managing agent of Defendant.  
17

18 65. As a direct result of Defendant’s conduct alleged above, Plaintiff has had to hire the  
19 services of an attorney and he has incurred, and continues to incur, legal expenses and attorneys’  
20 fees. Plaintiff is entitled to an award of attorneys’ fees and costs pursuant to California  
21 Government Code Section 12965(b).  
22

### 23 **SIXTH CAUSE OF ACTION**

#### 24 **(Disability Discrimination in Violation of California Fair Employment and Housing Act)**

25 As to Defendant Pacifica, Plaintiff alleges:  
26

27 66. The allegations set forth in the preceding paragraphs are realleged and incorporated  
28 herein by reference as though fully set forth herein.

1 67. At all times herein mentioned, California Government code Section 12940 subdivision  
2 (a) was in full force and effect and was binding on Defendant Pacifica. This subsection requires  
3 Defendant to refrain from discriminating against employees because of their disability or  
4 disabilities.  
5

6 68. Defendant Pacifica is an “employer” within the meaning of and subject to California Govt.  
7 Code §§ 12900, et seq., commonly referred to as the California Fair Employment and Housing Act  
8 (“FEHA”).  
9

10 69. The FEHA, and specifically, California Govt. Code § 12940(a), provides in pertinent part  
11 that, “It shall be an unlawful employment practice . . . [f]or an employer, because of . . . physical  
12 or mental disability . . . to discharge the person from employment . . . or to discriminate against  
13 the person . . . in terms, conditions, or privileges of employment.”  
14

15 70. The discriminatory actions of the Defendant against Plaintiff, including, but not limited to,  
16 barring him from the workplace, constructively terminating Plaintiff from employment due to  
17 Plaintiff's disabilities, denying him employment due to his disabilities, and failing to engage in a  
18 good faith interactive process or failure to accommodate Plaintiff, constitute unlawful  
19 discrimination based on disability in violation of FEHA, Govt. Code § 12940(a).  
20

21 71. Plaintiff was an employee with actual and/or perceived disabilities as defined by Govt.  
22 Code § 12926, in that he suffered from both physical and mental disabilities which affected his  
23 body and his mind and which affected at least one major life activities, including but not limited  
24 to walking, lifting, bending and/or working, and as such a member of the group of persons  
25 protected from discrimination based on his disabilities under Govt. Code § 12940(a).  
26

27 72. Defendants engaged in unlawful employment practices in violation of FEHA by  
28 discriminating against Plaintiff on the basis of his disability, failing to engage in the interactive

1 process to determine if Plaintiff could be given a reasonable accommodation to return to work,  
2 failing to provide Plaintiff with a reasonable accommodation, and then denying Plaintiff  
3 employment because of his disability. Such actions were in violation of FEHA, and carried out in  
4 direct response to Plaintiff's disability and requested accommodation.  
5

6 73. Plaintiff is informed and believes and based thereon alleges that his disabilities were a  
7 substantial factor in Defendants' decision to discriminate against Plaintiff, and then bar Plaintiff  
8 from his employment and deny employment to him in violation of Govt. Code § 12940(a). These  
9 actions were taken against Mr. Torres due to his disabilities. Mr. Torres was able to perform the  
10 essential functions of his job, with accommodation.  
11

12 74. Defendant had in place a formal or informal policy that specifically targeted and punished  
13 employees who had work restrictions, and needed reasonable accommodation due to a disability,  
14 and thereby applied a policy to Plaintiff that targeted employees with a disability or disabilities,  
15 including Plaintiff.  
16

17 75. Defendant barred Plaintiff from returning to his employment in substantial part due to  
18 Plaintiff's disabilities. Defendant failed to provide a legitimate non-discriminatory business reason  
19 for denying Plaintiff employment and its reasons for denying Plaintiff continued employment  
20 violate California's FEHA.  
21

22 76. On or about May 11, 2022, within the time provided by law, Plaintiff caused to have  
23 filed a charge with the California Department of Fair Employment and Housing ("DFEH"),  
24 alleging disability discrimination against Defendant. The DFEH issued the requisite immediate  
25 right to sue notice on that date.  
26  
27  
28

1 77. As a proximate result of Defendant's willful, knowing, and intentional acts of  
2 discrimination against him, Plaintiff has sustained losses in earnings and other employment  
3 benefits.

4  
5 78. As a proximate result of Defendant's willful, knowing, and intentional acts of  
6 discrimination against him, Plaintiff has suffered and continues to suffer emotional distress and  
7 mental pain and anguish.

8 79. Defendant's conduct, as described above, was willful, knowing, and intentional.  
9 Accordingly, Plaintiff seeks an award of punitive and exemplary damages against Defendant.  
10 Defendant committed the acts herein alleged maliciously, fraudulently, and oppressively with the  
11 wrongful intention of injuring Plaintiff, from an improper and evil motive amounting to malice,  
12 and in conscious disregard of his rights. Such conduct was carried out, authorized and/or ratified  
13 by a director or managing agent of Defendant.  
14

15  
16 80. As a direct result of Defendant's conduct alleged above, Plaintiff has had to hire the  
17 services of an attorney and he has incurred, and continues to incur, legal expenses and attorneys'  
18 fees. Plaintiff is entitled to an award of attorneys' fees and costs pursuant to California  
19 Government Code Section 12965(b).  
20

## 21 **SEVENTH CAUSE OF ACTION**

### 22 **(Failure to Engage in the Interactive Process in Violation of California Fair** 23 **Employment and Housing Act )**

24 As to Defendant Pacifica, Plaintiff alleges:

25 81. The allegations set forth in the preceding paragraphs are realleged and incorporated herein  
26 by reference as though fully set forth herein.  
27  
28



1 82. It is unlawful for an employer covered by California *Government Code* §12940 et seq.,  
2 to fail to engage in a timely, good faith, interactive process with the employee to determine  
3 effective reasonable accommodations, in response to a request for reasonable accommodation by  
4 an employee with known physical or mental disability or known medical condition. California  
5 *Government Code* § 12940(n), which provides, “It is an unlawful employment practice ... (n)  
6 For an employer or other entity covered by this part to fail to engage in a timely, good faith,  
7 interactive process with the employee or applicant to determine effective reasonable  
8 accommodations, if any, in response to a request for reasonable accommodation by an employee  
9 or applicant with a known physical or mental disability or known medical condition.”  
10  
11

12 83. Defendant denied and barred Plaintiff from employment due to Plaintiff’s disabilities  
13 after Defendants were informed of Plaintiff’s disabilities and his need for reasonable  
14 accommodations. Defendant refused to engage in the interactive process and/or to accommodate  
15 Plaintiff’s disabilities and restrictions.  
16

17 84. Defendants constructively terminated Plaintiff’s employment by barring him from  
18 employment due to his disabilities and for needing an accommodation. Plaintiff’s disabilities  
19 and his need of reasonable accommodations were substantial determining factors in Defendant’s  
20 decision to bar and/or constructively terminate Plaintiff from his employment. After Defendants  
21 were informed of Plaintiff’s disabilities and need of reasonable accommodations, Defendants  
22 failed to participate in a continuing good faith interactive process with Plaintiff to determine if  
23 Defendants could provide the reasonable accommodations to aid Plaintiff in his efforts to return  
24 to his job. Instead, Defendant barred Plaintiff from its workplace and denied him employment  
25 by refusing to accommodate Plaintiff’s physical limitations and mental disability, in violation of  
26 the FEHA.  
27  
28

1 85. The failure of Defendant to continuously participate in a meaningful interactive process  
2 in an effort to reasonably accommodate Plaintiff's disability/ies was due to discrimination and  
3 retaliation against Plaintiff. Instead of reasonably accommodating Plaintiff, Defendants used  
4 Plaintiff's request for reasonable accommodations to bar Plaintiff from employment.  
5

6 Defendant's acts, as more fully described above, constitute unlawful discrimination based on  
7 disability, and are in violation of FEHA, codified in California *Government Code* §12926.1(e),  
8 12940(n).  
9

10 86. Defendant failed to take any action to remedy the discriminatory working conditions.  
11 On the contrary, after Plaintiff expressed his need for reasonable accommodations, Defendants  
12 failed to participate with Plaintiff in a reasonable, good faith, interactive process to identify  
13 available reasonable accommodations for Plaintiff's medical restrictions and condition. Instead  
14 of conducting a meaningful and genuine interactive session, Defendants denied Plaintiff further  
15 employment and barred him from the workplace.  
16

17 87. Defendant, at all relevant times herein mentioned was able to accommodate Plaintiff's  
18 restrictions. However, Defendant did not conduct the required good faith interactive process or  
19 even attempt to engage in the interactive process. Instead of participating in the interactive  
20 process, Defendant simply refused to accommodate Plaintiff, and barred, and thus, constructively  
21 terminated Plaintiff from his employment. Plaintiff's disabilities, need for reasonable  
22 accommodations, and the failure of Defendant to conduct a legitimate, meaningful, and good  
23 faith interactive process were substantial factors in the decision to deny Plaintiff employment.  
24 As a proximate result of the acts of Defendant and each of them, as described above, Plaintiff  
25 suffered economic damages, including lost wages and benefits, and other compensatory damages  
26 in an amount to be ascertained at the time of trial.  
27  
28

1 88. As a further proximate result of the aforementioned acts of Defendant, and each of  
2 them, as described above, Plaintiff has suffered humiliation, mental anguish, and emotional and  
3 physical distress, and has been injured in body and mind all to Plaintiff's damage in an amount to  
4 be ascertained at the time of trial.

5  
6 89. As a further proximate result of the acts of Defendant, and each of them, as described  
7 above, Plaintiff will necessarily continue to expend sums in the future for the treatment of the  
8 physical, emotional, and mental injuries sustained by Plaintiff as a result of said Defendant's acts  
9 in an amount to be ascertained at the time of trial.

10  
11 90. As a direct and proximate result of the above-described acts of Defendant, Plaintiff has  
12 incurred attorney's fees and costs and, pursuant to *Government Code* §12965(b), Plaintiff is  
13 entitled to the reasonable value of such attorney's fees and costs.

14 91. Plaintiff is entitled to punitive damages under this cause of action, because Defendant  
15 engaged in malice, fraud, or oppression, as defined by Cal. *Civil Code* § 3294, in violating  
16 California's FEHA. Further, the Defendant knew of and approved or ratified the wrongful  
17 conduct, and/or the wrongful conduct was performed by a managing agent of the Defendant.  
18 The Defendant is therefore liable under *Civil Code* § 3294(b).

19  
20  
21 **EIGHTH CAUSE OF ACTION**

22 **(Failure to Provide Reasonable Accommodation in Violation of California Fair**  
23 **Employment and Housing Act)**

24 As to Defendant Pacifica, Plaintiff Alleges:

25  
26 92. The allegations set forth in the preceding paragraphs are realleged and incorporated  
27 herein by reference as though fully set forth herein.

28 93. It is unlawful for an employer to fail to make a reasonable accommodation for the known

1 physical and mental disabilities of an employee, under California *Government Code* § 12940(m).

2 94. After Defendant was informed of Plaintiff's disabilities, and was informed of Plaintiff's  
3 need of reasonable accommodations, Defendant failed to provide said available and reasonable  
4 accommodations such as assigning Plaintiff' light or modified duties and work away and apart  
5 from Defendant Mericle. Instead, Defendant retaliated against Plaintiff, refused to accommodate  
6 Plaintiff, barred Plaintiff from employment and constructively terminated Plaintiff from his job  
7 instead of providing reasonable accommodations. Thus, Plaintiff's disabilities and his need for  
8 reasonable accommodations when he returned to work were substantial motivating factors in  
9 Defendant's decision to deny Plaintiff employment.  
10  
11

12 95. Defendant used Plaintiff's need for reasonable accommodations to deny Plaintiff  
13 employment because the company did not want to reasonably accommodate Plaintiff and wanted  
14 to retaliate against him for his opposition to their unlawful acts. Defendant effectively terminated  
15 Plaintiff by barring him from employment so it would not have to accommodate Plaintiff's  
16 disabilities and to punish Plaintiff for his opposition to their unlawful actions. Defendant's  
17 unlawful acts, as more fully described above, including its failure to continue to reasonably  
18 accommodate Plaintiff's disabilities, constitute unlawful failure to provide reasonable  
19 accommodations in violation of the FEHA, codified in California *Government Code* §12940(m),  
20 which provides, "It is an unlawful employment practice ... (m)(1) For an employer or other entity  
21 covered by this part to fail to make reasonable accommodation for the known physical or mental  
22 disability of an applicant or employee.."  
23  
24

25 96. As a proximate result of the acts of Defendant, as described above, Plaintiff suffered  
26 economic damages, including lost wages and benefits, and other compensatory damages in an  
27 amount to be ascertained at the time of trial.  
28

1 97. As a further proximate result of the aforementioned acts of Defendant, and each of them,  
2 as described above, Plaintiff has suffered humiliation, mental anguish, and emotional and physical  
3 distress, and has been injured in body and mind all to Plaintiff's damage in an amount to be  
4 ascertained at the time of trial.

5  
6 98. As a further proximate result of the acts of Defendant, and each of them, as described  
7 above, Plaintiff will necessarily continue to expend sums in the future for the treatment of the  
8 physical, emotional, and mental injuries sustained by Plaintiff as a result of said Defendant's acts  
9 in an amount to be ascertained at the time of trial.

10  
11 99. As a direct and proximate result of the above-described acts of Defendant, Plaintiff has  
12 necessarily incurred attorney's fees and costs and, pursuant to the provisions of *California*  
13 *Government Code* §12965(b), Plaintiff is entitled to the reasonable value for attorney's fees and  
14 costs.

15  
16 100. Plaintiff is entitled to punitive damages under this cause of action, because Defendant  
17 engaged in malice, fraud, or oppression, as defined by Cal. *Civil Code* § 3294, in violating  
18 California's FEHA. Further, the Defendant knew of and approved or ratified the wrongful  
19 conduct, and/or the wrongful conduct was performed by a managing agent of the Defendant. The  
20 Defendant is therefore liable under Cal. *Civil Code* § 3294(b).

21  
22 **NINTH CAUSE OF ACTION**

23  
24 **(Failure to Take All Reasonable Steps to Prevent Disability Discrimination in**  
25 **Violation of California Fair Employment and Housing Act)**

26 As to Defendant Pacifica, Plaintiff alleges:

27 101. The allegations set forth in the preceding paragraphs are realleged and incorporated  
28 herein by reference as though fully set forth herein.

1 102. California *Government Code* Section 12940(k) makes it illegal for an employer to fail  
2 to take all reasonable steps necessary to prevent discrimination and harassment from occurring.

3 103. The FEHA, and specifically, California *Government Code* §12940(a), provides in  
4 pertinent part that, "It shall be an unlawful employment practice . . . [f]or an employer, because of  
5 . . . physical or mental disability. . . to discharge the person from employment . . . or to discriminate  
6 against the person . . . in terms, conditions, or privileges of employment." Additionally, section  
7 12940(k), which provides, "It is an unlawful employment practice . . . for an employer . . . to fail to  
8 take all reasonable steps necessary to prevent discrimination and harassment from occurring" in  
9 the workplace.  
10  
11

12 104. Defendant wrongfully terminated or barred Plaintiff from his employment after  
13 Defendant was informed of Plaintiff's disability/ies, and was informed of Plaintiff's need for  
14 reasonable accommodations. Plaintiff's disability/ies and his need for reasonable  
15 accommodations, in the form of light duty or modified duty to fully recover from his disability  
16 were substantial motivating factors in Defendant's decision to terminate Plaintiff.  
17

18 105. Defendant failed to take all reasonable steps to prevent discrimination and harassment  
19 from occurring in the workplace. Specifically, Defendant failed to train, supervise, monitor,  
20 counsel, coach or assist their supervisors and others in the performance of their duties and  
21 permitted their supervisors to discriminate and harass Plaintiff, and fire Plaintiff in violation of his  
22 disability rights.  
23

24 106. Plaintiff was discriminated against and retaliated against as described in this Complaint.  
25 Although Defendant knew or should have known of the discriminatory and retaliatory conduct, on  
26 the part of Plaintiff's supervisor(s), managers and directors, Defendant failed and refused to take  
27 all the reasonable steps necessary to prevent and/or cure the discrimination and retaliation from  
28

1 occurring.

2 107. Defendant failed or refused to take appropriate steps to abate or prevent discrimination  
3 and retaliation in the workplace by failing to effectively enforce policies against unlawful  
4 discrimination and retaliation, failing to thoroughly investigate incidents of discrimination and  
5 retaliation, and failing to take prompt and appropriate disciplinary action against perpetrators of  
6 discrimination and retaliation towards Plaintiff. This discrimination included but was not limited  
7 to Plaintiff being denied employment due to his disability/serious medical condition and because  
8 he exercised his California Fair Employment and Housing Act rights.  
9  
10

11 108. Defendant had in place policies and procedures that specifically prohibited discrimination,  
12 retaliation, and harassment based on disability and required Defendant's managers, officers, and  
13 agents to prevent disability discrimination and retaliation, against and upon employees of  
14 Defendants. Defendant's supervisor, managers and directors, and others in Defendant's Human  
15 Resources department, were at all relevant times Defendant's managerial agents, managers,  
16 officers, and/or agents of Defendant and were aware of Defendant's policies and procedures  
17 prohibiting discrimination and retaliation based on disability. The policies required Defendant's  
18 manager, officer, and agents to prevent disability discrimination and retaliation based on disability  
19 against and upon Defendant's employees, including Plaintiff.  
20  
21

22 109. Instead of abiding by the law and their own policies and procedures, Defendant illegally  
23 and improperly barred Plaintiff from employment despite Plaintiff's prior exemplary job  
24 performance.  
25

26 110. Furthermore, Defendant's supervisors and members of its HR department maintained  
27 broad discretionary powers regarding staffing, managing, hiring, firing, contracting, supervising,  
28 assessing, and establishing of corporate policy and practice in the Defendants' facilities.

1 Defendants, by and through their authorized managers, agents, employees, and representatives,  
2 chose to consciously and willfully ignore and refuse to employ said policies and procedures with  
3 respect to Plaintiff. Therefore, their outrageous conduct was fraudulent, malicious, oppressive, and  
4 was done in wanton disregard for the rights of Plaintiff and the rights and duties owed by each  
5 Defendant to Plaintiff.  
6

7 111. The response of Defendants and/or their agents/employees to the notice was so inadequate  
8 as to establish a deliberate indifference to, or tacit authorization or, the alleged offensive practices,  
9 and an affirmative causal link existed between Defendants' inaction and the injuries suffered by  
10 Plaintiffs.  
11

12 112. By failing to take all reasonable steps necessary to prevent and correct discrimination  
13 and by failing to properly investigate and remedy the discrimination that occurred, Defendant  
14 committed unlawful employment practices as described and prohibited under *Government Code*  
15 §12940(k).  
16

17 113. As a proximate result of the acts of Defendant, and each of them, as described above,  
18 Plaintiff suffered economic damages, including lost wages and benefits, and other compensatory  
19 damages in an amount to be ascertained at the time of trial  
20

21 114. As a further proximate result of the aforementioned acts of Defendant, and each of them,  
22 as described above, Plaintiff has suffered humiliation, mental anguish, and emotional and physical  
23 distress, and has been injured in body and mind all to Plaintiff's damage in an amount to be  
24 ascertained at the time of trial.  
25

26 115. As a further proximate result of the acts of Defendant, and each of them, as described  
27 above, Plaintiff will necessarily continue to expend sums in the future for the treatment of the  
28 physical, emotional, and mental injuries sustained by Plaintiff as a result of said Defendant's acts



1 in an amount to be ascertained at the time of trial.

2 116. As a direct and proximate result of the above-described acts of Defendant, Plaintiff has  
3 necessarily incurred attorney's fees and costs and, pursuant to the provisions of *Government Code*  
4 §12965(b), Plaintiff is entitled to the reasonable value for attorney's fees and costs.  
5

6 117. Plaintiff is entitled to punitive damages under this cause of action, because Defendant  
7 engaged in malice, fraud, or oppression, as defined by Cal. *Civil Code* § 3294, in violating  
8 California's FEHA. Further, the Defendant knew of and approved or ratified the wrongful  
9 conduct, and/or the wrongful conduct was performed by a managing agent of the Defendant. The  
10 Defendant thereby bears liability under Cal. *Civil Code* § 3294(b).  
11

12 **TENTH CAUSE OF ACTION**

13 **(Retaliation in Violation of the**

14 **California Fair Employment and Housing Act)**

15 As to Defendant Pacifica Foundation, Inc., Plaintiff alleges:  
16

17 118. The allegations set forth in the preceding paragraphs are realleged and incorporated  
18 herein by reference as though fully set forth herein.

19 119. At all times herein mentioned, Government Code section 12940, subdivisions (a) and (h)  
20 were in full force and effect and were binding on Defendant. These subsections prohibit  
21 retaliation by Defendant against Plaintiff for opposing unlawful acts or engaging in protected  
22 activity.  
23

24 120. The actions of Defendants as described more fully above, constitute retaliation in  
25 violation of Government Code section 12940, subdivision (a) and (h). Plaintiff engaged in  
26 numerous instances of opposing unlawful sexual harassment by complaining to management.  
27 The complaints were ignored, or met with indifference, retaliation, discrimination, and further  
28

1 acts of sexual harassment as set forth above designed to cause, and in fact causing, Plaintiff  
2 stress and unhappiness and to force him out of the workplace.

3 121. Plaintiff also complained of and opposed unlawful disability discrimination by  
4 complaining of Defendant's conduct in barring him from employment and refusing to provide  
5 reasonable accommodations for his disabilities and for their refusal to engage in the interactive  
6 process.  
7

8 122. Instead of taking prompt, remedial action to stop the sexual harassment and sexual  
9 assaults by Defendant Mericle, Defendant Pacifica ignored Plaintiff's complaints and Mericle  
10 continued to harass and assault Plaintiff.  
11

12 123. In June 2020, Defendants cut Plaintiff's hours and eliminated overtime for him.

13 124. On May 17, 2021, on August 3, 2021, and on May 11, 2022, within the time provided by  
14 law, Plaintiff caused to have filed charges of retaliation against Defendant with the California  
15 Department of Fair Employment and Housing ("DFEH"). The DFEH issued right-to-sue notices  
16 against Defendants dated May 17, 2021, March 2, 2022, and May 11, 2022.  
17

18 125. As a proximate result of Defendants' willful, knowing, and intentional acts of  
19 discrimination and retaliation against Plaintiff, Plaintiff has sustained losses in earnings and  
20 other employment benefits.  
21

22 126. As a proximate result of Defendants' willful, knowing, and intentional retaliation and  
23 retaliatory harassment against him, Plaintiff suffered emotional distress, mental pain and  
24 anguish, financial losses and uncertainty, loss of benefits and damage to his career.  
25

26 127. Defendant's conduct, as described above, was willful, knowing, and intentional.  
27 Accordingly, Plaintiff seeks an award of punitive and exemplary damages against Defendant.  
28

1 128. As a direct result of the acts alleged above, Plaintiff has had to hire the services of an  
2 attorney. As a result, Plaintiff has incurred and continues to incur legal expenses and attorneys'  
3 fees, and is entitled to an award of attorneys' fees and costs pursuant to Government Code  
4 section 12965(b).  
5

6 **ELEVENTH CAUSE OF ACTION**

7 **(Retaliation in Violation of the**  
8 **Labor Code Section 1102.5)**  
9

10 As to Defendant Pacifica Foundation, Inc., Plaintiff alleges:

11 129. The allegations set forth in the preceding paragraphs are realleged and incorporated  
12 herein by reference as though fully set forth herein.

13 130. As alleged herein, and in violation of California Labor Code Section 1102.5, Mr. Torres  
14 had reasonable cause to believe that defendants, and each of them, were violating federal, state,  
15 and local laws and regulations prohibiting among other things, sexual assaults, workplace  
16 harassment, discrimination, and retaliation, Civil Code Section 1708.5, Sections 12940 et seq of  
17 the California Government Code, Article 1 of the California Constitution; Section 51.7 of the  
18 California Civil Code and various other California and federal statutes, regulations and codes.  
19

20 131. As alleged herein, Mr. Torres complained about, objected, raised concerns, participated  
21 in investigations, and otherwise disclosed information about said violations, to, among others,  
22 government agencies, defendants, including to persons with authority over him and to employees  
23 who had the authority to investigate, discover or correct the violation or noncompliance.  
24

25 132. As alleged herein and in violation of Labor Code Section 1102.5 et seq, defendants cut  
26 Mr. Torres' work hours, continued to subject him to sexual harassment, and in June 2021, barred  
27  
28

1 him from employment and otherwise took adverse employment actions against him in retaliation  
2 for engaging in protected activities.

3 133. At all times herein mentioned, Labor Code Section 1102.5 prohibits an employer from  
4 retaliating against an employee for sharing information which the employee has reasonable cause  
5 to believe discloses a violation of state or federal law, or of a local, state or federal rule or  
6 regulation, to a government agency, or to a person with authority over the employee, or to  
7 another employee who has authority to investigate or correct the violations. Labor Code Section  
8 1102.5, subd. (b).  
9  
10

11 134. The actions of Defendants as described more fully above, constitute retaliation in  
12 violation of Labor Code Section 1102.5. Plaintiff engaged in numerous instances of reporting  
13 unlawful sexual assault, harassment, and discrimination by complaining to supervisors, Human  
14 Resources, and management and by complaining to the Department of Fair Employment and  
15 Housing. The complaints were met with retaliation, discrimination, and further acts of sexual  
16 harassment as set forth above designed to cause, and in fact causing, Plaintiff stress and  
17 unhappiness and to force him out of the workplace.  
18

19 135. Plaintiff also complained of and thereby opposed unlawful disability discrimination by  
20 complaining of Defendant's conduct in barring him from employment and refusing to provide  
21 reasonable accommodations for his disabilities and for their refusal to engage in the interactive  
22 process.  
23

24 136. As a proximate result of Defendants' willful, knowing, and intentional acts of  
25 discrimination and retaliation against Mr. Torres, Mr. Torres has sustained losses in earnings and  
26 other employment benefits.  
27  
28

1 137. As a proximate result of Defendants' willful, knowing, and intentional retaliation and  
2 retaliatory harassment against him, Plaintiff suffered emotional distress, mental pain and  
3 anguish, financial losses, and uncertainty.  
4

5 138. Defendant's conduct, as described above, was willful, knowing, and intentional.  
6 Accordingly, Plaintiff seeks an award of punitive and exemplary damages against Defendant.

7 139. The aforesaid acts and omissions of defendants, and each of them, justify the imposition  
8 of any and all civil penalties pursuant to Labor code Section 1102.5(f).  
9

10 140. As a result of Defendants' conduct alleged herein, Mr. Torres has had to hire the services  
11 of an attorney. As a result, Plaintiff has incurred and continues to incur legal expenses and  
12 attorneys' fees, and is entitled to an award of attorneys' fees and costs pursuant to Government  
13 Code section 12965(b).  
14

## 15 **TWELFTH CAUSE OF ACTION**

### 16 **(Ralph Act - Violation of Civil Code Sections 51.7, 51(b))**

17 As to all Defendants, Plaintiff alleges:

18 141. The allegations set forth in the preceding paragraphs are realleged and incorporated  
19 herein by reference as though fully set forth herein.  
20

21 142. At all times relevant hereto, California Civil Code Section 51.7 was in full force and  
22 effect and was binding on Defendants. This subsection prohibits acts of violence, or threats of  
23 violence against an individual, including an employee, on the basis of sex or national origin.  
24 Civil Code Section 51 (b).  
25

26 143. The actions of Defendants as described more fully above, constitute acts of sexual  
27 violence in violation of Civil Code Sections 51.7 and 51(b).  
28

1 144. Defendant Pacifica is liable for the actions of its Directors and Managers as they were  
2 acting as managers and agents and in the course and scope of their employment and in their  
3 capacities as Director and manager when the batteries occurred.  
4

5 145. As a proximate result of Defendants' willful, knowing, and intentional acts of sexual  
6 violence and threats of such against him, Plaintiff has sustained losses in earnings and other  
7 employment benefits.

8 146. As a proximate result of Defendants' willful, knowing, and intentional acts of sexual  
9 violence and threats of such against him, Plaintiff suffered emotional and physical distress and  
10 pain and anguish.  
11

12 147. Defendants' conduct was willful, knowing, and intentional. Accordingly, Plaintiff seeks  
13 an award of punitive and exemplary damages against Defendants pursuant to Civil Code section  
14 52 (b) (1).  
15

16 148. Plaintiff seeks an award of statutory penalties against Defendants as set forth in Civil  
17 Code Section 52 (b) (1) through (b) (3).

18 149. As a direct result of the acts alleged above, Plaintiff has had to hire the services of an  
19 attorney. Plaintiff has incurred and continues to incur legal expenses and attorneys' fees, and is  
20 entitled to an award of attorneys' fees and costs pursuant to Civil Code section 52 (b)(3).  
21

22 **THIRTEENTH CAUSE OF ACTION**

23 **(Sexual Battery in Violation of Civ. Code Section 1708.5)**

24  
25 As to all Defendants, Plaintiff alleges:

26 150. The allegations set forth in the preceding paragraphs are realleged and incorporated  
27 herein by reference as though fully set forth herein.  
28

1 151. In violation of Civil Code section 1708.5, the Defendant Mericle intentionally caused  
2 offensive contacts with one or more intimate parts of Plaintiff's body as afore pled.

3 152. Mericle is liable for his own tortuous conduct.  
4

5 153. Defendant Pacifica is liable for the conduct of its Director, Defendant Mericle, because  
6 he was at all relevant times acting within the course and scope of his agency and employment,  
7 and pursuant to the doctrine of respondeat superior. Defendant Pacifica is responsible for the  
8 conduct of the Defendant Mericle because said Defendant ratified Mericle's conduct after being  
9 made aware of the same.  
10

11 154. As a proximate result of the said conduct, Plaintiff has suffered mental anguish and  
12 emotional suffering past and future in an amount in excess of the minimum jurisdiction of this  
13 Court and according to proof.

14 155. As a further and proximate result of the said conduct, Plaintiff will need medical attention  
15 in the future, all to Plaintiff's damages in a sum according to proof.  
16

17 156. The afore pled conduct of the Defendant Mericle constitutes oppression, fraud, and  
18 malice thereby entitling Plaintiff to an award of punitive damages. Plaintiff is informed and  
19 believes, and thereon alleges, that Defendant Pacifica had advance knowledge of the unfitness of  
20 Defendant Mericle and but employed him nonetheless with a conscious disregard of the rights  
21 and safety of the Plaintiff and others, or ratified or authorized the said conduct. Plaintiff is  
22 further informed and believe, and thereon allege, that this advance knowledge, or act of  
23 oppression, fraud, or malice or act of, ratification or authorization were on the part of a managing  
24 agent or owner acting on behalf of the Defendant Pacifica.  
25  
26  
27  
28

1 **FOURTEENTH CAUSE OF ACTION**

2 **(Wrongful Constructive Termination in Violation of Public Policy –**

3 **Fair Employment and Housing Act)**

4 As to Defendant Pacifica, Plaintiff alleges:

5  
6 157. The allegations set forth in the preceding paragraphs are realleged and incorporated  
7 herein by reference as though fully set forth herein.

8 158. At all times relevant hereto, the fundamental, formally established public policy of the  
9 State of California, as expressed in Government Code section 12940 *et. seq.* was and is that  
10 employees be free from sex-based, national origin-based and disability-based discrimination,  
11 harassment, and retaliation in their employment, including actions which force employees out of  
12 their employment.  
13

14 159. The actions of Defendants as described more fully above, violate the public policy  
15 against sex discrimination and sexual harassment, and national origin discrimination, disability  
16 discrimination, and retaliation in violation of Government Code section 12940, subdivisions (a),  
17 (h), and (j)(1).  
18

19 160. As a proximate result of Defendants' willful, knowing, and intentional acts of sex  
20 discrimination, sexual harassment, ancestry and national origin discrimination, retaliation, and  
21 disability discrimination, and Plaintiff's opposition thereto, Plaintiff was targeted for removal  
22 from employment because of his gender, his national origin, and his disabilities, and specifically  
23 because he refused the sexual advances of Defendant, Director Mark Mericle. As a result, he  
24 was denied employment and has sustained losses in earnings and other employment benefits.  
25

26 161. As a proximate result of Defendants' willful, knowing, and intentional discrimination,  
27 Plaintiff suffered emotional distress and mental pain and anguish.  
28



1 162. Defendants' conduct was willful, knowing, and intentional. Accordingly, Plaintiff seeks  
2 an award of punitive and exemplary damages against Defendant.

3 163. As a direct result of the acts alleged above, Plaintiff has had to hire the services of an  
4 attorney. Plaintiff has incurred and continues to incur legal expenses and attorneys' fees, and is  
5 entitled to an award of attorneys' fees and costs pursuant to Government Code section 12965(b).  
6

7 **FIFTEENTH CAUSE OF ACTION**

8 **(Wrongful Constructive Termination in Violation of Public Policy –**  
9 **Civil Code Section 1708.5.)**  
10

11 As to Defendant Pacifica Foundation, Inc. Plaintiff alleges:

12 164. The allegations set forth in the preceding paragraphs are realleged and incorporated  
13 herein by reference as though fully set forth herein.

14 165. At all times relevant hereto, the fundamental, formally established public policy of the  
15 State of California, as expressed in Civil Code Section 1708.5 was and is that employees be free  
16 from sexual assault and battery in their employment, including actions which retaliate and force  
17 employees out of their employment for opposing sexual assault and battery.  
18

19 166. The actions of Defendant as described more fully above, violate the public policy against  
20 subjecting employees to sexual assault and battery in the workplace in violation of Civil Code  
21 Section 1708.5.  
22

23 167. As a proximate result of Defendants' willful, knowing, and intentional acts of retaliating  
24 against Plaintiff for opposing sexual assault and battery by Defendant's Director Mark Mericle,  
25 by targeting Plaintiff for removal from his employment, Plaintiff was denied employment and  
26 has sustained losses in earnings and other employment benefits.  
27  
28

1 168. As a proximate result of Defendants' willful, knowing, and intentional discrimination,  
2 Plaintiff suffered emotional distress and mental pain and anguish.

3 169. Defendants' conduct was willful, knowing, and intentional. Accordingly, Plaintiff seeks  
4 an award of punitive and exemplary damages against Defendant.  
5

6 170. As a direct result of the acts alleged above, Plaintiff has had to hire the services of an  
7 attorney. Plaintiff has incurred and continues to incur legal expenses and attorneys' fees, and is  
8 entitled to an award of attorneys' fees and costs pursuant to Government Code section 12965(b).  
9

### 10 **SIXTEENTH CAUSE OF ACTION**

#### 11 **(Wrongful Constructive Termination in Violation of Public Policy –**

#### 12 **Labor Code Section 1102.5)**

13 As to Defendant Pacifica Foundation, Inc. Plaintiff alleges:

14 164. The allegations set forth in the preceding paragraphs are realleged and incorporated  
15 herein by reference as though fully set forth herein.  
16

17 165. At all times relevant hereto, the fundamental, formally established public policy of the  
18 State of California, as expressed in Labor Code Section 1102.5 is to encourage workplace  
19 whistle-blowers to report unlawful acts without the fear of retaliation.  
20

21 166. The actions of Defendant, as described more fully above, violate the public policy of  
22 protecting whistle blowers from retaliation set forth in Labor Code Section 1102.5.

23 167. As a proximate result of Defendant's' willful, knowing, and intentional acts of retaliating  
24 against Plaintiff for opposing unlawful sexual assaults, harassment, discrimination and  
25 retaliation, Plaintiff was denied employment and has sustained losses in earnings and other  
26 employment benefits.  
27  
28

1 168. As a proximate result of Defendants' willful, knowing, and intentional discrimination,  
2 Plaintiff suffered emotional distress and mental pain and anguish.

3 169. Defendants' conduct was willful, knowing, and intentional. Accordingly, Plaintiff seeks  
4 an award of punitive and exemplary damages against Defendant.  
5

6 170. As a direct result of the acts alleged above, Plaintiff has had to hire the services of an  
7 attorney. Plaintiff has incurred and continues to incur legal expenses and attorneys' fees, and is  
8 entitled to an award of attorneys' fees and costs pursuant to Government Code section 12965(b).  
9

10 **SEVENTEENTH CAUSE OF ACTION**

11 **(Negligent Hiring/Supervision/Retention)**

12 As to Defendant Pacifica Foundation, Inc., Plaintiff alleges:

13 171. The allegations set forth in the preceding paragraphs are realleged and incorporated  
14 herein by reference as though fully set forth herein.  
15

16 172. By virtue of Plaintiff's employment relationship and status with Defendants, and  
17 Defendant's position as employer of Defendant Mark Mericle, Defendant Pacifica owed to  
18 Plaintiff a duty not to employ, retain or properly supervise Mr. Mericle, given his dangerous and  
19 sexually-exploitative propensities, which Defendant Pacifica knew or had reason to know about  
20 or should have known about had Pacifica engaged in a reasonable, meaningful and adequate  
21 investigation of his actions and background prior to his hiring or retaining him in his  
22 employment and position of power.  
23

24 173. Defendant Pacifica expressly and implicitly represented that Defendant Mericle was not a  
25 sexual threat to employees who would come into contact or fall under Mr. Mericle's influence,  
26 control, and direction.  
27  
28

1 174. At no time did Defendant Pacifica have in place a reasonable system or procedure to  
2 promptly and thoroughly investigate, supervise and monitor managers, supervisors and staff,  
3 including Mr. Mericle, to prevent sexual harassment or assault and continuing actions of sexual  
4 harassment and assault, nor did they implement a system or procedure to oversee or monitor his  
5 conduct toward employees under his supervision or with whom he came into contact in the  
6 workplace.  
7

8 175. Defendant Pacifica was aware, or had reason to be aware, that employees such as  
9 Plaintiff Francisco Torres are vulnerable to abuse in the workplace, including sexual harassment  
10 and assault by managers, supervisors, directors, and other persons of authority such as Mr.  
11 Mericle, prior to Defendant Mericle's sexual assault of Plaintiff.  
12

13 176. Defendant Pacifica was put on notice, and had reason to know, that Defendant Mericle  
14 had engaged in unlawful sexual harassment and assault of Plaintiff and that it was foreseeable  
15 that he would continue to engage in illicit sexual harassment and sexual assault of Plaintiff after  
16 Defendant Pacifica refused to and failed to take prompt, remedial action to prevent further sexual  
17 harassment and assaults, and that Mericle would continue to do so under the cloak of the  
18 authority, confidence, trust and power bestowed upon him by Defendant Pacifica.  
19

20 177. Defendant Pacifica was placed on actual or constructive notice that Defendant Mark  
21 Mericle had sexually harassed and assaulted Plaintiff during his employment with Defendant  
22 Pacifica. Defendant had knowledge of Defendant Mericle's unlawful sexual conduct toward  
23 Plaintiff during his employment yet chose to allow Defendant Mericle to remain unsupervised in  
24 the workplace where he continued to sexually assault, abuse and sexually harass Plaintiff.  
25

26 178. Even though Defendant Pacifica knew or had reason to know of the sexually illicit  
27 conduct by Mark Mericle, Defendant Pacifica failed to use reasonable care in investigating  
28

1 Defendant Mericle and did fail to promptly investigate, supervise, or monitor Defendant Mericle  
2 in order to stop his sexually unlawful conduct and to ensure the safety of its employees.

3 179. Defendant Pacifica's conduct was a breach of its duties owed to Plaintiff.  
4

5 180. As a result of the above-described conduct, Plaintiff has suffered emotional and physical  
6 shock, harm, emotional distress, physical manifestations of emotional distress, humiliation, loss  
7 of self-esteem, loss of full enjoyment of life, and will sustain loss of earnings.

8 **JURY TRIAL DEMANDED**

9 Plaintiff hereby demands a jury trial on all causes of action and claims to which he has a  
10 right to jury trial.  
11

12 **PRAYER FOR RELIEF**

13 WHEREFORE, Plaintiff prays for judgment against Defendants as follows:

14 1. For compensatory damages, including lost wages and employment benefits and other  
15 special damages according to proof;  
16

17 2. For mental and emotional distress damages;

18 3. For punitive damages;

19 4. For an award of interest, including prejudgment interest, at the legal rate;  
20

21 5. For statutory penalties owing;

22 6. For an award of attorneys' fees;

23 7. For an award of front pay;

24 8. For costs of suit incurred;

25 9. For an order enjoining Defendant Pacifica Foundation, Inc., and its employees,  
26 managers, agents, supervisors and any and all other persons acting on Defendant's behalf or  
27  
28

1 under Defendant's control from violating the California Fair Employment and Housing Act,  
2 California Government Code Sections 12940 et seq.;

3 10. For an order enjoining Defendant Pacifica Foundation, Inc., and its employees,  
4 managers, agents, supervisors and any and all other persons acting on Defendant's behalf or  
5 under Defendant's control from violating Civil Code Section 1708.5.;

6 11. For an order enjoining Defendant Pacifica Foundation, Inc., and its employees,  
7 managers, agents, supervisors and any and all other persons acting on Defendant's behalf or  
8 under Defendant's control from violating Civil Code Section 51.7;

9 12. For an order enjoining Defendant Pacifica Foundation, Inc., and its employees,  
10 managers, agents, supervisors and any and all other persons acting on Defendant's behalf or  
11 under Defendant's control from violating Labor Code Section 1102.5;

12 13. For an order enjoining Defendant Mark Mericle from violating the California Fair  
13 Employment and Housing Act, California Government Code Sections 12940 et seq.;

14 14. For an order enjoining Defendant Mark Mericle from violating Civil Code Section  
15 1708.5.;

16 15. For an order enjoining Defendant Mark Mericle from violating Civil Code Section  
17 51.7.;

18 16. For an order enjoining Defendant Mark Mericle from violating Labor Code Section  
19 1102.5;

20 17. For an order that Defendant Pacifica Foundation, Inc. institute and implement  
21 policies and practices to insure its employees are not subjected to sexual harassment, sexual  
22 assault and battery and sexual violence or retaliation for engaging in protected activity; and  
23

1           18. For an order awarding such other and further relief as the court deems just and  
2 proper.

3 Dated: July 28 , 2022

O'DELL LAW OFFICES

6 By: /s/ Valerie Toohey O'Dell  
7 VALERIE TOOHEY O'DELL  
8 Attorney for Plaintiff Francisco Torres  
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