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Attorneys for Plaintiff, Clifford R. Feldman, M.D.,
on his own behalf and on behalf of all other similarly
situated aggrieved employees

FILED
Superior Court of California
County of Los Angeles

01/22/2021

Sherri R. Carter, Executive Officer / Clerk of Court

By: P. Figueroa Deputy

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES – CENTRAL DISTRICT**

CLIFFORD R. FELDMAN, M.D.,

Plaintiff,

vs.

AURORA LAS ENCINAS, LLC, a California
limited liability company, SIGNATURE
HEALTHCARE SERVICES, LLC, a
Michigan limited liability company, DANIEL
SUZUKI, M.D., an individual, TREVOR
ASMUS, an individual, and DOES 1 to 100,
inclusive,

Defendants.

Case No.: 20STCV24203

*[Assigned for purposes to the Honorable Michael
L. Stern, Department 62]*

**THIRD AMENDED COMPLAINT FOR
DAMAGES FOR:**

- 1. ASSOCIATIONAL DISABILITY
DISCRIMINATION IN VIOLATION OF
GOV'T CODE §§ 12926(o), 12940(a);**
- 2. FAILURE TO ENGAGE IN A TIMELY,
GOOD-FAITH INTERACTIVE PROCESS,
IN VIOLATION OF GOV'T CODE §
12940(n);**
- 3. FAILURE TO PROVIDE A
REASONABLE ACCOMMODATION, IN
VIOLATION OF GOV'T CODE §
12940(m)(1)**
- 4. FEHA RETALIATION, IN VIOLATION
OF GOV'T CODE §§ 12940(h), (m)(2);**
- 5. FAILURE TO PREVENT DISABILITY
DISCRIMINATION OR RETALIATION,
IN VIOLATION OF GOV'T CODE §
12940(k);**
- 6. NEGLIGENCE;**
- 7. WHISTLEBLOWER RETALIATION, IN
VIOLATION OF LABOR CODE §§ 6310,
6311, 232.5;**
- 8. WHISTLEBLOWER RETALIATION, IN
VIOLATION OF LABOR CODE § 1102.5;**
- 9. FAILURE TO INDEMNIFY FOR
NECESSARY BUSINESS**

DEMAND FOR JURY TRIAL

COMES NOW Plaintiff Clifford R. Feldman, M.D. (“Plaintiff” or “Dr. Feldman”), for causes of action against Defendants Aurora Las Encinas, LLC (“Las Encinas”), Signature Healthcare Services, LLC (“Signature”), Daniel Suzuki, M.D. (“Dr. Suzuki”), Trevor Asmus (“Asmus”), and DOES 1 to 100, inclusive (collectively, “Defendants”), alleging as follows:

NATURE OF THE ACTION

1. This is a complaint brought under the California Government Code (“Gov’t Code”) and California Labor Code (“Labor Code”) as well as related common law principles, for associational disability discrimination, failure to engage in a timely, good-faith interactive process, failure to provide a reasonable accommodation, retaliation for using personal protective equipment (“PPE”), failure to prevent disability discrimination and/or retaliation, requiring an illegal employment contract term, negligence, failure to maintain a safe and healthy work environment, whistleblower retaliation, failure to indemnify for necessary business expenditures, and wrongful termination in violation of public policy. Plaintiff seeks compensatory, general, and punitive damages, restitution, attorney’s fees, and costs of suit from Defendants.

PARTIES

2. Plaintiff Clifford R. Feldman, M.D. is, and at all times relevant was, a board-certified licensed psychiatrist and an individual residing in Los Angeles County, California. From approximately March 1, 2014 through his involuntary and wrongful termination effective May 31, 2020, Dr. Feldman was employed by Las Encinas, Signature, and Does 1 to 100 (“Employer Defendants”) as Co-Director of Las Encinas’ Partial Hospitalization Programs (“PHP”) and Intensive Outpatient Programs (“IOP”), and supervised USC, Keck School of Medicine students at Las Encinas’ premises, an acute psychiatric facility.

3. Defendant Las Encinas is, and at all times relevant was, a California limited liability company that employed Plaintiff and others in California, headquartered at 2900 E. Del Mar Blvd., Pasadena, CA 91107, a.k.a. the Las Encinas Behavioral Health Hospital or Las Encinas Hospital.

4. Defendant Signature is, and at all times relevant was, a Michigan limited liability company that employed Plaintiff and other employees throughout California, with corporate offices at 2065 Compton Avenue, Corona, CA 92881.

1 5. Defendant Dr. Suzuki is, and at all times relevant was, an individual residing in Los
2 Angeles County, California. During the relevant period, Dr. Suzuki was the Medical Director of Las
3 Encinas and Plaintiff's direct medical supervisor.

4 6. Defendant Asmus is, and at all times relevant was, an individual residing in Los
5 Angeles County, California. During the relevant period, Asmus, who holds a master's degree in
6 Health Administration but is not a medical doctor, was the Chief Executive Officer of Las Encinas.

7 7. Plaintiff currently is unaware of the true names of the Defendants sued herein as
8 Does 1 through 100, inclusive. Plaintiff sues said Defendants by said fictitious names and will
9 amend this complaint when the true names and capacities are ascertained or when such facts
10 pertaining to liability are ascertained, or as permitted by law or by the Court. Plaintiff is informed
11 and believes, and thereon alleges, that each of the fictitiously named Defendants is in some manner
12 responsible for the events and allegations set forth in this complaint. Plaintiff is informed and
13 believes, and thereon alleges, that Does 1 through 100 are the partners, joint employers, agents,
14 owners, shareholders, directors, members, officers, managers or employees of Las Encinas and/or
15 Signature. Plaintiff is informed and believes, and thereon alleges, that at all relevant times, each
16 defendant was an employer, principal, agent, manager, partner, joint venturer, officer, director,
17 controlling shareholder, subsidiary, affiliate, parent corporation, successor in interest and/or
18 predecessor in interest of some or all of the other Defendants, and was engaged with some or all of
19 the other Defendants in a joint enterprise for profit, and bore such other relationships to some or all
20 of the other Defendants so as to be liable for their conduct with respect to the matters alleged in this
21 complaint. Plaintiff is informed and believes, and thereon alleges, that each defendant acted
22 pursuant to and within the scope of the relationships alleged above, and that at all relevant times,
23 each defendant did, knew or should have known about, authorized, ratified, adopted, approved,
24 controlled, or aided and abetted the conduct of all other Defendants, which proximately caused the
25 damages herein alleged. Plaintiff is informed and believes, and thereon alleges, that each of said
26 Defendants is in some manner intentionally, negligently, willfully or otherwise responsible for the
27 acts, omissions, occurrences, and transactions alleged herein.

28 8. Plaintiff is informed and believes, and thereon alleges, that each and all of the acts

1 and omissions alleged herein was performed by, or is attributable to, Las Encinas, Signature, Dr.
2 Suzuki, Asmus, and/or Does 1 through 100, each acting as the agent, employee, alter ego, and/or
3 joint venturer of, or working in concert with, each of the other co-Defendants and was acting within
4 the course and scope of such agency, employment, joint venture, or concerted activity with legal
5 authority to act on the others' behalf. The acts of any and all Defendants were in accordance with,
6 and represent, the official policy and practice of Las Encinas.

7 9. Las Encinas, Signature, and the business entities sued as Does 1 through 100 were
8 and are Plaintiff's employers. Under California law, Employer Defendants are jointly and severally
9 liable as employers, or other persons acting on behalf of Employer Defendants, for violating, or
10 causing to be violated, the violations alleged herein because they have each exercised sufficient
11 control over the terms, wages, hours, working conditions, and employment of Plaintiff. Each
12 Employer Defendant had the power to hire and fire Plaintiff and other employees, supervise and
13 control their work schedule and/or conditions of employment, determine their rate of pay and/or
14 control how, or if, Plaintiff and other employees were paid for time worked. Employer Defendants
15 suffered or permitted Plaintiff to work and/or engaged Plaintiff and others so as to create a common
16 law employment relationship. As joint employers of Plaintiff, Employer Defendants are jointly and
17 severally liable for the penalties and all other relief available to Plaintiff as alleged herein.

18 **JURISDICTION AND VENUE**

19 10. Jurisdiction for this matter properly lies with this Court because the monetary
20 damages and restitution sought by Plaintiff exceed the minimal jurisdiction limits of the Superior
21 Court and will be established according to proof at trial. This Court also has jurisdiction over this
22 action pursuant to the California Constitution, Article VI, § 10.

23 11. This Court also has jurisdiction in this matter because during his employment,
24 Plaintiff was a California citizen, as were Defendants Asmus and Dr. Suzuki, and Defendant Las
25 Encinas was organized as a California limited liability company. Further, there is no federal question
26 at issue, as the issues herein are based solely on California statutes and law.

27 12. Venue is proper in this Court because Defendants employ persons, including Dr.
28 Feldman, in this county, and thus a substantial portion of the transactions and occurrences related to

1 this action occurred in this county. (CCP § 395.) Moreover, the principal violations of California
2 law occurred in California, and the conduct of Defendants which form the basis for Plaintiff's
3 claims occurred within or arose out of California and within this county.

4 **EXHAUSTION OF ADMINISTRATIVE REMEDIES**

5 13. Plaintiff exhausted his administrative remedies by timely filing a charge with the
6 Department of Fair Employment and Housing and thereafter received a "right to sue" notification,
7 attached hereto as **Exhibit A**.

8 14. Plaintiff further exhausted his administrative remedies by timely filing a notice dated
9 June 26, 2020 pursuant to The Labor Code Private Attorneys General Act of 2004 ("PAGA") with
10 the Labor and Workforce Development Agency ("LWDA") of the specific provisions of the Labor
11 Code alleged to have been violated, including the facts and theories to support the alleged
12 violations, and by serving such notice via certified mail on Las Encinas. Plaintiff then filed an
13 amended PAGA notice dated September 4, 2020 that related back to his June 26 PAGA notice.
14 Plaintiff's Amended PAGA notice dated September 4, 2020 is attached hereto as **Exhibit B**.

15 **GENERAL ALLEGATIONS**

16 15. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 14, inclusive,
17 as if fully set forth herein.

18 16. Employer Defendants hired Dr. Feldman effective March 1, 2014 to serve two
19 functions: (1) be Co-Director of the Partial Hospitalization Programs ("PHP") and Intensive
20 Outpatient Programs ("IOP") for Las Encinas, and (2) supervise USC, Keck School of Medicine
21 students at Las Encinas, an acute psychiatric facility. Part of Dr. Feldman's responsibilities included
22 oversight over chemical dependency and dual diagnosis (chemical dependency and mental health
23 issues combined) outpatient programs. In that capacity, Dr. Feldman treated patients in connection
24 with Las Encinas' chemical dependency inpatient programs, where drugs defined in Health &
25 Safety Code section 11839.2(c) were dispensed to wean patients off their dependency on narcotics.
26 Occasionally, Dr. Feldman prescribed one such drug to his patients for their cravings.

27 17. The psychiatric facility is a stand-alone facility, not affiliated with any medical
28 hospital or emergency room that would provide medical services for patients infected by the 2019

1 novel coronavirus (“SARS-CoV-2,” or “COVID-19”). The position was a part-time position, and
2 Las Encinas most recently had capped Dr. Feldman’s work hours for which he could be paid at 39
3 hours per month.

4 18. Nevertheless, while Dr. Feldman was on a long-planned vacation in mid-March
5 2020, he followed the developing COVID-19 outbreak throughout the United States. Dr. Feldman
6 was very concerned about returning to a healthy work environment free of the disease, not just for
7 himself, his co-workers, and the patients at Las Encinas, but also because he was caring for his 91-
8 year-old mother-in-law with pre-existing disabilities (which made her highly susceptible to contract
9 the virus) at home and he was terrified he might inadvertently bring the disease home with him and
10 transmit it to her. A few days before his return to work, Dr. Feldman called in to Las Encinas from
11 his vacation to inquire what sort of personal protective equipment (“PPE”) he should wear upon
12 returning to work. Dr. Feldman had good reason to believe – based on his medical training,
13 guidelines from the Centers for Disease Control and Prevention (“CDC”) that were constantly
14 changing, and reports in the news – that the virus was transmitted by contact of human hands with
15 other surfaces, by droplets from people’s mouths or other aerosolized transmission, and even
16 possibly through the eyes.¹

17 19. Dr. Feldman spoke with the Administrative Program Director of Outpatient Services,
18 who said she would have to talk to the Medical Director (and Plaintiff’s direct clinical boss), Dr.
19 Suzuki, and get back to him. Instead, Dr. Suzuki quickly and uncharacteristically called back Dr.
20 Feldman directly and strongly discouraged him from wearing PPE, telling Dr. Feldman that Las
21 Encinas did not want him to wear PPE for fear that the sight of Dr. Feldman in a mask might cause
22 patients and other employees to panic; Dr. Suzuki specifically expressed concern that employees
23 would demand masks. When Dr. Feldman pressed Dr. Suzuki about his concerns regarding virus
24

25 ¹ See, e.g., Wamsley, Laurel “Coronavirus FAQs: Can I Catch It Through My Eyes? Will Goggles Help?”
26 NPR, May 22, 2020 (“Based upon what we know, I would say that the possibility of acquiring it on the
27 surface of your eye is possible. It certainly is plausible,” says Dr. Thomas Steinemann, a spokesperson for the
28 American Academy of Ophthalmology and professor of ophthalmology at MetroHealth Medical Center in
Cleveland. ‘Any sort of open mucosa [mucous membrane] is a chance for a droplet to land there and get into
your body,’ says Dr. Abraar Karan, a physician at Harvard Medical School.”) (available at
<https://www.npr.org/sections/goatsandsoda/2020/05/22/861299427/coronavirus-faqs-can-i-catch-it-through-the-eyes-will-goggles-help>)

1 transmission, particularly his living situation with his mother-in-law and the extent of her
2 disabilities, Dr. Suzuki said words to the effect of, “You do what you feel what you need to do.”

3 20. Dr. Feldman returned to work on March 30, 2020. He showed up to work wearing a
4 white painter’s mask, gloves, and safety goggles that fit over his prescription glasses, which was
5 simply equipment Dr. Feldman already had at home. (Defendants did not provide Dr. Feldman with
6 PPE at any time relevant to this action.) No other employees were wearing masks on March 30.

7 21. On or about March 30, 2020, Asmus saw Dr. Feldman wearing his homemade PPE
8 and became visibly upset. Asmus confronted Dr. Feldman briefly, saying something to the effect of,
9 “What is that?” and then walked away with a disgusted look.

10 22. At the time Dr. Feldman returned to work from vacation, Las Encinas was not
11 requiring patients to wear masks or even to socially distance during group therapy sessions, as
12 recommended by state and federal authorities. What is more, patients were crammed into the small
13 transportation van, without masks, to attend the group therapy program. Dr. Feldman worked part-
14 time at two other facilities and his other employers required patients and healthcare providers to
15 wear masks and/or allowed doctors to conduct sessions remotely by videoconference (“telepsych”).
16 Dr. Feldman requested from Dr. Suzuki to conduct telepsych therapy sessions and offered to use the
17 telepsych software program he had been using with non-Las Encinas patients; Dr. Suzuki told Dr.
18 Feldman he was not allowed to use his own software and denied the telepsych request generally,
19 telling Dr. Feldman that any such means of therapy would have to be approved by Las Encinas’
20 corporate officers. At the time, Las Encinas’ position was that none of the above proposed
21 protective measures were necessary because no one at Las Encinas had tested positive for COVID.

22 23. Dr. Feldman also warned staff members and a therapist that they should wear
23 protective masks, too.

24 24. On or about April 2, 2020, Dr. Suzuki sent out a “TigerText” to Las Encinas
25 personnel. TigerTexts are short-term text messages that disappear after several days if not captured.
26 The April 2 TigerText instructed Las Encinas personnel that wearing masks and gloves could make
27 the situation worse, effectively discouraging them, as a matter of policy, from wearing PPE.

28 25. Dr. Feldman understands and believes, and on that basis alleges, that Las Encinas’

1 policy and/or practice of discouraging the use of PPE was motivated by a fear of losing business.
2 Facilities like Las Encinas are incentivized to see as many patients as possible, as they charge a site
3 fee per patient and are reimbursed by insurance companies. Defendants feared, without good
4 reason, that requiring healthcare providers to use masks and gloves would make a statement to their
5 patients that Las Encinas was unsafe, and the patients would choose to treat elsewhere.

6 26. After returning to work, Dr. Feldman noticed other ways in which Las Encinas was
7 not protecting its employees. For example, in the doctors' Medical Records Lounge, where many
8 people had access to and were touching patient records, there was a sink for employees to wash
9 their hands but there was no soap at the sink. Washing hands with soap has been proven to be an
10 extremely effective deterrent to COVID-19.² Nor was there hand sanitizer, wipes, or any other
11 disinfectant to clean commonly used telephones. Dr. Feldman complained to Asmus' secretary
12 about the lack of soap in the medical records department on or about April 10, 2020.

13 27. On or about April 10, 2020, Defendants stopped assigning new patients to Dr.
14 Feldman. Doctors like Dr. Feldman are paid directly by the insurance companies for services
15 provided to patients; the more patients to whom they administer mental healthcare, the more they
16 can earn. In refusing to assign Dr. Feldman new patients, Defendants deliberately retaliated against
17 Dr. Feldman by slashing both his pay and his job responsibilities. Over the course of the next
18 several weeks, Dr. Feldman's pay at Las Encinas slowed to a trickle of what it had been.

19 28. On or about April 14, 2020, Asmus wrote Dr. Feldman that he was being terminated
20 effective June 1, 2020 (or that Dr. Feldman's work responsibilities would include services provided
21 through May 31, 2020). No reason was given for the termination. Dr. Feldman had not received any
22 prior discipline, performance reviews or evaluations, or any other indication that Las Encinas
23 perceived Dr. Feldman's work performance to be deficient in any manner. Rather, Dr. Feldman had
24

25 _____
26 ² See Stiepan, DeeDee, "COVID-19 expert explains what soap does to SARS-CoV-2 virus," The Mayo
27 Clinic, April 2, 2020, video with Dr. Gregory Poland ("Your hand has oils on it, and viruses stick to that oil,
28 they have an electrostatic charge to them... When you are washing with soap, soap has things that decrease
surface tension in them, so you are physically rubbing – by friction – and washing away that virus. **It is the
most effective thing we know to do.** That's why surgeons, for example, scrub their hands so very carefully
before they go into an [operating room]. It works, and it works really well... If you have mucus or dirt on
your hands, hand sanitizer cannot penetrate that, whereas soap literally washes that away.")_

1 performed his duties as expected and Las Encinas had profited from Dr. Feldman's work.

2 29. On or about May 5, 2020, Dr. Feldman requested his job back in writing to both
3 Asmus and Dr. Suzuki and copied Human Resources. Dr. Feldman complained he was terminated
4 for wearing PPE and detailed that he was caring for his 91-year-old mother-in-law, and he listed the
5 disabilities from which she suffered that made her, in his words, "extremely susceptible" to
6 contracting COVID-19. Dr. Feldman also stated that he did not believe he was terminated for
7 performance issues, nor was he terminated for lack of work as there were more patients returning to
8 Las Encinas by late April after an initial drop in attendance due to COVID-19 safer-at-home orders.
9 Dr. Feldman noted his return would be best for the continuity of treatment for some of the patients
10 he had been seeing. Defendants did not respond to Dr. Feldman's letter, nor did Las Encinas offer
11 Dr. Feldman his job back. Dr. Feldman's termination became effective June 1, 2020.

12 **FIRST CAUSE OF ACTION**

13 **ASSOCIATIONAL DISABILITY DISCRIMINATION**

14 **IN VIOLATION OF GOV'T CODE §§ 12926(o), 12940(a)**

15 **(Against Employer Defendants)**

16 30. Plaintiff incorporates by reference and re-alleges the allegations contained in
17 paragraphs 1 through 29 inclusive, as though fully set forth herein.

18 31. At all relevant times herein, Plaintiff was an employee of Employer Defendants as
19 defined in the California regulations, 2 C.C.R. § 11008(c) ("Any individual under the direction and
20 control of an employer under any...contract of hire...oral or written").

21 32. At all times relevant, Employer Defendants were employers within the definition of
22 the Fair Employment and Housing Act ("FEHA"), California Government Code sections 12926(d)
23 and 12940(a), *et seq.*, as well as the California regulations, 2 C.C.R. § 11008(d).

24 33. The FEHA prohibits discrimination against an employee because of his actual and/or
25 perceived disabilities. Per Government Code sections 12926(o), the term "disability" as a protected
26 class within the FEHA "includes a perception that the person has [a disability] or that the person is
27 associated with a person who has, or is perceived to have," a disability.

28 34. At all relevant times, Dr. Feldman was a person with a perceived disability within

1 the meaning of the FEHA in that he had to care for his disabled mother-in-law which limited his
2 major life activities, including work.

3 35. Employer Defendants perceived or regarded and/or treated Dr. Feldman as if he had
4 a disability that limited his ability to perform major life activities, including but not limited to,
5 work, because they knew that he cared for his disabled mother-in-law who lived with him.

6 36. Dr. Feldman was able to perform his essential job duties with reasonable
7 accommodation for his disability or impairment.

8 37. The FEHA makes it an unlawful practice to discharge an employee from
9 employment because of the employee's disability or to discriminate against the employee in his
10 compensation or in the terms, conditions, or privileges of employment. Gov't Code §12940(a), (c).

11 38. Employer Defendants discharged Dr. Feldman and refused to transfer/reinstate him
12 to a comparable position in retaliation for wearing PPE as a precaution to protect his mother-in-law,
13 whom they knew had existing disabilities that made her highly susceptible to COVID-19.

14 39. Dr. Feldman's association with an individual with a disability or impairment and/or
15 Employer Defendants' belief that Dr. Feldman was associated with an individual who suffered
16 from a disability or impairment was a substantial motivating reason for Employer Defendants'
17 decision to take adverse actions against him including, but not limited to, refusing to engage in the
18 interactive process, refusing to accommodate him, and/or discharging his employment.

19 40. Employer Defendants discriminated against Dr. Feldman because of his perceived
20 associational disability by, among other things:

- 21 a. Failing to engage in the interactive process with Dr. Feldman to determine effective
- 22 reasonable accommodations for his perceived disability;
- 23 b. Refusing to make reasonable accommodations for Dr. Feldman because of his
- 24 perceived disability; and
- 25 c. Terminating Dr. Feldman's employment because of his perceived disability.

26 41. Such conduct is in violation of the FEHA and has resulted in damage and injury to
27 Dr. Feldman as alleged herein.

28 42. As a direct and foreseeable result of the aforesaid acts of Employer Defendants, Dr.

1 Feldman has lost and will continue to lose income and benefits in an amount to be proven at the
2 time of trial. Plaintiff claims such amount as damages together with pre-judgment interest pursuant
3 to Civil Code section 3287 and/or any other provision of law providing for pre-judgment interest.

4 43. As a result of the aforesaid acts of Employer Defendants, Dr. Feldman claims
5 general damages for mental and emotional distress and aggravation in an amount to be proven at the
6 time of trial.

7 44. The above described acts of Employer Defendants, by and through their managing
8 agents, officers or directors, were engaged in with a deliberate, cold, callous, fraudulent and
9 intentional manner in order to injure and damage Dr. Feldman and/or with a conscious disregard for
10 Dr. Feldman's rights. Such acts were despicable, and constitute malice, fraud and/or oppression
11 within the meaning of Civil Code section 3294. Dr. Feldman requests an assessment of punitive
12 damages against Employer Defendants, in an amount to be proven at the time of trial.

13 45. As a direct and proximate result of Employer Defendants' acts, as alleged above, Dr.
14 Feldman has necessarily incurred and will continue to incur attorney's fees and costs in an amount
15 to be proven at the time of trial. Dr. Feldman is entitled to recover prevailing party attorney's fees
16 and costs pursuant to Government Code section 12965(b), and by any other relevant statutory
17 entitlements.

18 **SECOND CAUSE OF ACTION**

19 **FAILURE TO ENGAGE, IN VIOLATION OF GOV'T CODE § 12940(n)**

20 **(Against Employer Defendants)**

21 46. Plaintiff incorporates each allegation set forth in paragraphs 1 through 45.

22 47. At all relevant times herein, Plaintiff was an employee of Employer Defendants as
23 defined in the California regulations, 2 C.C.R. § 11008(c) ("Any individual under the direction and
24 control of an employer under any...contract of hire...oral or written").

25 48. At all times relevant, Employer Defendants were employers within the definition of
26 the FEHA, California Government Code sections 12926(d) and 12940(a), *et seq.*, as well as the
27 California regulations, 2 C.C.R. § 11008(d).

28 49. Employer Defendants perceived or regarded and/or treated Dr. Feldman as if he had

1 a disability that limited his ability to perform major life activities, including but not limited to, work
2 at times.

3 50. Dr. Feldman requested that Employer Defendants make reasonable accommodations
4 for his association with an individual with a disability so that he would be able to perform the
5 essential functions of his job, including wearing PPE.

6 51. Dr. Feldman was willing to and attempted to participate in an interactive process to
7 determine whether a reasonable accommodation could be made so he would be able to perform the
8 essential functions of his job, including wearing PPE.

9 52. Gov't Code section 12940(n) makes it illegal for an employer or other entity covered
10 by FEHA to fail to engage in a timely, good faith, interactive process with an employee to
11 determine effective reasonable accommodations, if any, in response to a request for a reasonable
12 accommodation by an employee with a known physical disability.

13 53. Dr. Feldman requested to wear PPE while working at the facility as a reasonable
14 accommodation to his mother-in-law's disability.

15 54. Employer Defendants failed to participate in a timely good-faith interactive process
16 with Dr. Feldman to determine whether a reasonable accommodation could be made and failed to
17 fully accommodate Dr. Feldman, insofar as he was terminated, which caused his harm.

18 55. Such conduct is in violation of the FEHA and has resulted in damage and injury to
19 Dr. Feldman as alleged herein.

20 56. As a direct and foreseeable result of the aforesaid acts of Employer Defendants,
21 Plaintiff has lost and will continue to lose income and benefits in an amount to be proven at the time
22 of trial. Plaintiff claims such amount as damages together with pre-judgment interest pursuant to
23 Civil Code section 3287 and/or any other provision of law providing for pre-judgment interest.

24 57. As a result of the aforesaid acts of Employer Defendants, Dr. Feldman claims
25 general damages for mental and emotional distress and aggravation in an amount to be proven at the
26 time of trial.

27 58. The above described acts of Employer Defendants, by and through their managing
28 agents, officers or directors, were engaged in with a deliberate, cold, callous, fraudulent and

1 intentional manner in order to injure and damage Dr. Feldman and/or with a conscious disregard for
2 Dr. Feldman's rights. Such acts were despicable, and constitute malice, fraud and/or oppression
3 within the meaning of Civil Code section 3294. Dr. Feldman requests an assessment of punitive
4 damages against Defendants, in an amount to be proven at the time of trial.

5 59. As a direct and proximate result of Employer Defendants' acts, as alleged above, Dr.
6 Feldman has necessarily incurred and will continue to incur attorney's fees and costs in an amount
7 to be proven at the time of trial. Dr. Feldman is entitled to recover prevailing party attorney's fees
8 and costs pursuant to Government Code section 12965(b), and by any other relevant statutory
9 entitlements.

10 **THIRD CAUSE OF ACTION**

11 **FAILURE TO PROVIDE REASONABLE ACCOMMODATION, GOV'T CODE § 12940(m)**
12 **(Against Employer Defendants)**

13 60. Plaintiff incorporates each allegation set forth in paragraphs 1 through 59.

14 61. At all relevant times herein, Plaintiff was an employee of Employer Defendants as
15 defined in the California regulations, 2 C.C.R. § 11008(c) ("Any individual under the direction and
16 control of an employer under any...contract of hire...oral or written").

17 62. At all times relevant, Employer Defendants were employers within the definition of
18 the FEHA, California Government Code sections 12926(d) and 12940(a), *et seq.*, as well as the
19 California regulations, 2 C.C.R. § 11008(d).

20 63. Employer Defendants perceived or regarded and/or treated Dr. Feldman as if he had
21 a disability that limited his ability to perform major life activities, including but not limited to, work
22 at times.

23 64. A reasonable accommodation is defined as including "[m]aking existing facilities
24 used by employees readily accessible to, and usable by, individuals with disabilities." Gov't Code §
25 12926(p)(1).

26 65. Dr. Feldman was able to perform the essential functions of his job with reasonable
27 accommodation for his association with an individual with a disability, including wearing PPE
28 during a pandemic when major national health organizations and governmental entities in California

1 and Los Angeles County were urging citizens to wear facemasks and gloves. Wearing a facemask
2 and gloves would have made the existing facilities at Las Encinas usable by Dr. Feldman such that
3 he would have a greatly decreased risk of transmitting COVID-19 to his mother-in-law, a qualified
4 individual with existing disabilities. A reasonable accommodation allows an employee with a
5 disability “to enjoy the equivalent benefits and privileges of employment as are enjoyed by
6 similarly situated employees without disabilities.” 2 C.C.R. § 11065(p).

7 66. Employer Defendants knew Dr. Feldman’s request for an accommodation of wearing
8 PPE was reasonable because they adopted and made mandatory the policy of wearing PPE after
9 they discovered that a Las Encinas employee had tested positive for COVID-19.

10 67. Gov’t Code section 12940(m)(1) makes it illegal for an employer or other entity
11 covered by FEHA to fail to make a reasonable accommodation for the known physical disability of
12 an employee.

13 68. Employer Defendants failed to provide a reasonable accommodation for Dr.
14 Feldman’s disability by discharging him in retaliation for wearing PPE to work, which caused harm
15 to Dr. Feldman.

16 69. Employer Defendants’ failure to provide a reasonable accommodation was a
17 substantial factor in causing Dr. Feldman’s harm.

18 70. Such conduct is in violation of the FEHA and has resulted in damage and injury to
19 Dr. Feldman as alleged herein. *Gelfo v. Lockheed Martin Corp.* (2006) 140 Cal.App.4th 34, 39.

20 71. As a direct and foreseeable result of the aforesaid acts of Employer Defendants,
21 Plaintiff has lost and will continue to lose income and benefits in an amount to be proven at the time
22 of trial. Plaintiff claims such amount as damages together with pre-judgment interest pursuant to
23 Civil Code section 3287 and/or any other provision of law providing for pre-judgment interest.

24 72. As a result of the aforesaid acts of Employer Defendants, Dr. Feldman claims
25 general damages for mental and emotional distress and aggravation in an amount to be proven at the
26 time of trial.

27 73. The above described acts of Employer Defendants, by and through their managing
28 agents, officers or directors, were engaged in with a deliberate, cold, callous, fraudulent and

1 intentional manner in order to injure and damage Dr. Feldman and/or with a conscious disregard for
2 Dr. Feldman's rights. Such acts were despicable, and constitute malice, fraud and/or oppression
3 within the meaning of Civil Code section 3294. Dr. Feldman requests an assessment of punitive
4 damages against Defendants, in an amount to be proven at the time of trial.

5 74. As a direct and proximate result of Employer Defendants' acts, as alleged above, Dr.
6 Feldman has necessarily incurred and will continue to incur attorney's fees and costs in an amount
7 to be proven at the time of trial. Dr. Feldman is entitled to recover prevailing party attorney's fees
8 and costs pursuant to Government Code section 12965(b), and by any other relevant statutory
9 entitlements.

10 **FOURTH CAUSE OF ACTION**

11 **FEHA RETALIATION, IN VIOLATION OF GOV'T CODE §§ 12940(h), 12940(m)(2)**

12 **(Against Employer Defendants)**

13 75. Plaintiff incorporates each allegation set forth in paragraphs 1 through 74.

14 76. At all relevant times herein, Plaintiff was an employee of Employer Defendants as
15 defined in the California regulations, 2 C.C.R. § 11008(c) ("Any individual under the direction and
16 control of an employer under any...contract of hire...oral or written").

17 77. At all times relevant, Employer Defendants were employers within the definition of
18 the FEHA, California Government Code sections 12926(d) and 12940(a), *et seq.*, as well as the
19 California regulations, 2 C.C.R. § 11008(d).

20 78. Employer Defendants perceived or regarded and/or treated Dr. Feldman as if he had
21 a disability or impairment(s) that limited his ability to perform major life activities, including but
22 not limited to, working at times.

23 79. Dr. Feldman sought a reasonable accommodation, including, but not limited to
24 wearing PPE and/or engaging in a timely good-faith interactive process regarding a reasonable
25 accommodation under the FEHA. Because of his association with an individual with a disability and
26 subsequent need for accommodation and/or engaging in protected activities, Employer Defendants
27 failed to interact and accommodate Dr. Feldman and instead terminated Dr. Feldman's employment.

28 80. Gov't Code section 12940(h) makes it illegal for an employer or person to discharge

1 or otherwise discriminate against any person because the person has opposed any practices
2 forbidden by FEHA, such as the failure to engage in a timely, good faith interactive process or the
3 failure to provide a reasonable accommodation.

4 81. Gov't Code section 12940(m)(2) makes it illegal for an employer or any other entity
5 to retaliate or otherwise discriminate against a person for requesting an accommodation for a known
6 physical disability, regardless of whether the request was granted.

7 82. Dr. Feldman's perceived disability by association, his need and/or Corporate
8 Defendant's belief that he needed a reasonable accommodation for his perceived disability, and/or
9 Dr. Feldman's attempts to engage in a timely good-faith interactive process regarding a reasonable
10 accommodation under the FEHA were substantial motivating reasons for Corporate Defendant's
11 decision to take adverse actions against Dr. Feldman, including but not limited to, failing to interact
12 with and accommodate him and/or discharging his employment.

13 83. Such conduct is in violation of the FEHA and has resulted in damage and injury to
14 Dr. Feldman as alleged herein.

15 84. As a direct and foreseeable result of the aforesaid acts of Employer Defendants,
16 Plaintiff has lost and will continue to lose income and benefits in an amount to be proven at the time
17 of trial. Plaintiff claims such amount as damages together with pre-judgment interest pursuant to
18 Civil Code section 3287 and/or any other provision of law providing for pre-judgment interest.

19 85. As a result of the aforesaid acts of Employer Defendants, Dr. Feldman claims
20 general damages for mental and emotional distress and aggravation in an amount to be proven at the
21 time of trial.

22 86. The above described acts of Employer Defendants, by and through their managing
23 agents, officers or directors, were engaged in with a deliberate, cold, callous, fraudulent and
24 intentional manner in order to injure and damage Dr. Feldman and/or with a conscious disregard for
25 Dr. Feldman's rights. Such acts were despicable, and constitute malice, fraud and/or oppression
26 within the meaning of Civil Code section 3294. Dr. Feldman requests an assessment of punitive
27 damages against Defendants, in an amount to be proven at the time of trial.

28 87. As a direct and proximate result of Employer Defendants' acts, as alleged above, Dr.

1 Feldman has necessarily incurred and will continue to incur attorney's fees and costs in an amount
2 to be proven at the time of trial. Dr. Feldman is entitled to recover prevailing party attorney's fees
3 and costs pursuant to Government Code section 12965(b), and by any other relevant statutory
4 entitlements.

5 **FIFTH CAUSE OF ACTION**

6 **FAILURE TO PREVENT, IN VIOLATION OF GOV'T CODE § 12940(k)**

7 **(Against Employer Defendants)**

8 88. Plaintiff incorporates each allegation set forth in paragraphs 1 through 87.

9 89. At all relevant times herein, Plaintiff was an employee of Employer Defendants as
10 defined in the California regulations, 2 C.C.R. § 11008(c) ("Any individual under the direction and
11 control of an employer under any...contract of hire...oral or written").

12 90. At all times relevant, Employer Defendants were employers within the definition of
13 the FEHA, California Government Code sections 12926(d) and 12940(a), *et seq.*, as well as the
14 California regulations, 2 C.C.R. § 11008(d).

15 91. Dr. Feldman was subjected to discrimination and/or retaliation in the course of his
16 employment with Defendants.

17 92. Gov't Code section 12940(k) makes it illegal for an employer to fail to take all
18 reasonable steps necessary to prevent discrimination from occurring.

19 93. Defendants failed to take reasonable steps to prevent discrimination and/or
20 retaliation, which caused harm to Dr. Feldman.

21 94. Defendant's conduct is in violation of the FEHA and has resulted in damage and
22 injury to Dr. Feldman as alleged herein.

23 95. As a direct and foreseeable result of the aforesaid acts of Defendants, Dr. Feldman
24 has lost and will continue to lose income and benefits in an amount to be proven at the time of trial.
25 Dr. Feldman claims such amount as damages together with pre-judgment interest pursuant to Civil
26 Code section 3287 and/or any other provision of law providing for pre-judgment interest.

27 96. As a result of the aforesaid acts of Defendants, Dr. Feldman claims general damages
28 for mental and emotional distress and aggravation in an amount to be proven at the time of trial.

98. As a direct and proximate result of Defendants' acts, as alleged above, Plaintiff has necessarily incurred and will continue to incur attorney's fees and costs in an amount to be proven at the time of trial. Plaintiff is entitled to recover prevailing party attorney's fees and costs pursuant to Government Code section 12965(b), and by any other relevant statutory entitlements.

NEGLIGENCE

99. Plaintiff incorporates each allegation set forth in paragraphs 1 through 98.

100. It is the public policy of the State of California that employees be employed under the minimum terms and conditions established by the Labor Code and applicable regulations.

101. At all relevant times, Labor Code sections 6400, 6401, 6402, 6403, 6404, 6406, and 6407 were in full force and effect and were binding on Employer Defendants. Further, at all relevant times, Labor Code section 6406 was binding on Defendant Asmus.

102. Labor Code section 6400 provides, “Every employer shall furnish employment and a place of employment that is safe and healthful for the employees therein.”

103. Labor Code section 6401 provides, “Every employer shall furnish and use safety devices and safeguards, and shall adopt and use practices, means, methods, operations, and processes which are reasonably adequate to render such employment and place of employment safe and healthful. Every employer shall do every other thing reasonably necessary to protect the life, safety, and health of employees.”

104. Labor Code section 6402 provides, “No employer shall require, or permit an employee to go or be in any employment or place of employment which is not safe or healthful.” Labor Code

1 section 6404 provides, “No employer shall occupy or maintain any place of employment that is not
2 safe and healthful.”

3 105. Labor Code section 6403 provides, “No employer shall fail or neglect to...(a) provide
4 and use safety devices and safeguards reasonably adequate to render the employment and place of
5 employment safe...” Section 6403 further provides that an employer must “do every other thing
6 reasonably necessary to protect the life, safety, and health of employees.”

7 106. Labor Code section 6406 provides, “No person shall...Interfere in any way with the
8 use [of any safety device or safeguard for use in the workplace] by any other person.” Labor Code
9 section 6406 further provides, “No person shall...Fail or neglect to do every other thing reasonably
10 necessary to protect the life, safety, and health of employees.”

11 107. Asmus and Employer Defendants owed Dr. Feldman a legal duty to provide a safe and
12 healthy workplace during the outbreak of a pandemic, particularly with prior knowledge that Dr.
13 Feldman lived with a family member who was susceptible to contracting COVID-19. Asmus and
14 Employer Defendants owed Dr. Feldman the duty to “do every other thing reasonably necessary to
15 protect the life, safety, and health of employees,” as articulated in Labor Code sections 6403 and
16 6406, including but not limited to providing Dr. Feldman with and allowing him to wear PPE.

17 108. Asmus and Employer Defendants breached their duty to protect Dr. Feldman’s health
18 and safety by refusing to allow Dr. Feldman to wear PPE to work for fear of losing business, by
19 failing to provide PPE to all their employees, by failing to require that patients and healthcare
20 providers maintain responsible social distancing during therapy sessions, by failing to transport
21 patients to the facility in a safer manner than crammed maskless in the transportation van, and by
22 failing to provide soap for basic handwashing.

23 109. But for Defendants’ negligent failure to provide proper safety measures, Dr. Feldman
24 would not have had to have brought his own PPE from home and would not have been fired.

25 110. Dr. Feldman was harmed because Asmus and Employer Defendants terminated his
26 employment.

27 111. Thus, Defendants’ breach was a substantial and proximate cause of Dr. Feldman’s
28 resulting harm.

112. Defendants' negligence was a substantial factor in causing Dr. Feldman harm.

113. Defendants' conduct has resulted in damage and injury to Plaintiff as alleged herein.

114. As a direct and foreseeable result of the aforesaid acts of Defendants, Dr. Feldman has lost and will continue to lose income and benefits in an amount to be proven at the time of trial.

115. As a result of the aforesaid acts of Defendants, Dr. Feldman claims general damages for mental and emotional distress and aggravation in an amount to be proven at the time of trial.

116. The above-described acts of Employer Defendants, by and through their managing agents, officers or directors, were engaged in with a deliberate, cold, callous, fraudulent and intentional manner in order to injure and damage Dr. Feldman and/or with a conscious disregard for Dr. Feldman's rights. Such acts were despicable, and constitute malice, fraud and/or oppression within the meaning of Civil Code section 3294. Dr. Feldman requests an assessment of punitive damages against Employer Defendants, in an amount to be proven at the time of trial.

SEVENTH CAUSE OF ACTION

WHISTLEBLOWER RETALIATION, VIOLATING LABOR CODE §§ 6310, 6311, 232.5

(Against Employer Defendants)

117. Plaintiff incorporates by reference and re-alleges the allegations contained in paragraphs 1 through 116, inclusive, as though fully set forth herein.

118. At all relevant times, Labor Code sections 6310, 6311, and 232.5 were in full force and effect and were binding on Employer Defendants.

119. Labor Code section 6310(a)(4) makes it illegal for any person to discharge or in any manner discriminate against any employee if the employee has "exercised any other rights protected by the federal Occupational Safety and Health Act (29 U.S.C. Sec. 651 et seq.)..."

120. Labor Code section 6310(b) provides, in relevant part, "any employee who is discharged...or in any other manner discriminated against in the terms and conditions of employment by his or her employer because the employee has made a bona fide oral or written complaint to...his or her employer...of unsafe working conditions, or work practices, in his or her employment or place of employment...shall be entitled to reinstatement and reimbursement for lost wages and work benefits caused by the acts of the employer." Willfully refusing to rehire such an

1 employee is a misdemeanor. *Id.*

2 121. Labor Code section 6311 provides, “No employee shall be laid off or discharged for
3 refusing to perform work in the performance of which this code, including Section 6400, any
4 occupational safety or health standard or any safety order of the division or standards board will be
5 violated, where the violation would create a real and apparent hazard to the employee or his or her
6 fellow employees.” Section 6311 further provides that an employee who is laid off or discharged
7 for refusing to perform work under such circumstances shall have a right of action for wages for
8 the time the employee is out of work due to the layoff or discharge.

9 122. Labor Code section 232.5(c) provides, “No employer may...Discharge, formally
10 discipline, or otherwise discriminate against an employee who discloses information about the
11 employer’s working conditions.”

12 123. Dr. Feldman complained to Dr. Suzuki that it was unsafe for him to report to work
13 during the COVID-19 pandemic without the protection of PPE, specifically a facemask and gloves,
14 given that he was caring for his disabled 91-year-old mother-in-law who lived with him. Dr.
15 Feldman made it clear he did not want to work without such protective equipment, particularly
16 since Las Encinas was not enforcing social distancing between doctors and patients. Dr. Feldman
17 also complained to Asmus that the medical records sink lacked soap for handwashing.

18 124. Employer Defendants violated Sections 6310, 6311, and 232.5 when they retaliated
19 against Plaintiff through all actions described herein, including but not limited to terminating his
20 employment.

21 125. As a proximate result of the wrongful conduct of Employer Defendants, and each of
22 them, Dr. Feldman has suffered and continues to sustain substantial losses in earnings and other
23 employment benefits in an amount according to proof at the time of trial, to which he is entitled
24 pursuant to Sections 6310 and 6311.

25 **EIGHTH CAUSE OF ACTION**

26 **WHISTLEBLOWER RETALIATION, IN VIOLATION OF LABOR CODE § 1102.5**

27 **(Against All Defendants)**

28 126. Plaintiff incorporates by reference and re-alleges the allegations contained in

1 paragraphs 1 through 125, inclusive, as though fully set forth herein.

2 127. At all relevant times, Labor Code section 1102.5 was in full force and effect and
3 was binding on Defendants. Section 1102.5(b) provides, in relevant part, “An employer, or any
4 person acting on behalf of the employer, shall not retaliate against an employee for disclosing
5 information... to a person with authority over the employee or another employee who has the
6 authority to investigate, discover, or correct the violation or noncompliance... if the employee has
7 reasonable cause to believe that the information discloses a violation of state or federal statute, or a
8 violation of or noncompliance with a local, state, or federal rule or regulation, regardless of
9 whether disclosing the information is part of the employee’s job duties.”

10 128. Dr. Feldman reported to Dr. Suzuki – a person with authority over Plaintiff – that he
11 did not feel safe working at the facility without the PPE he brought from home for fear of
12 transmitting COVID-19 to his 91-year-old disabled mother-in-law whom he was caring for at
13 home. Dr. Feldman reasonably believed that working without a facemask and gloves while coming
14 into contact with patients who potentially carried the novel coronavirus, whether or not they
15 exhibited any symptoms, violated state and federal guidelines, as well as state and federal laws
16 regarding maintaining a safe and healthy workplace. Dr. Feldman also complained to Asmus,
17 through his executive secretary, that the medical records sink lacked soap for handwashing.
18 Employer Defendants terminated Dr. Feldman, in part, in retaliation for the above disclosures.

19 129. Section 1102.5(c) provides, “An employer, or any person acting on behalf of the
20 employer, shall not retaliate against an employee for refusing to participate in an activity that
21 would result in a violation of state or federal statute, or a violation of or noncompliance with a
22 local, state, or federal rule or regulation.”

23 130. The federal Occupational Safety and Health Administration (“OSHA”) guideline
24 1910.132(a) provides, “Protective equipment, including personal protective equipment for eyes,
25 face, head, and extremities, protective clothing, respiratory devices, and protective shields and
26 barriers, shall be provided, used, and maintained in a sanitary and reliable condition wherever it is
27 necessary by reason of hazards of processes or environment...capable of causing injury or
28 impairment in the function of any part of the body through absorption, inhalation or physical

1 contact.”

2 131. OSHA guideline 1910.138(a) provides, “Employers shall select and require
3 employees to use appropriate hand protection when employees’ hands are exposed to hazards such
4 as those from skin absorption of harmful substances...”

5 132. The California Occupational Safety and Health Act (“Cal OSHA”) special order on
6 PPE provides, “Whenever employees are exposed to hazards in the work place, and where
7 engineering or administrative controls are not effective in eliminating the hazards, personal
8 protective equipment shall be provided and used in accordance with the applicable requirements of
9 Article 3 of the Construction Safety Orders.” 8 C.C.R. § 8414(a). Such PPE includes head, body,
10 foot, hand, ear, eye, and face protections. Moreover, “Personal protective equipment shall be
11 maintained in good operating and sanitary conditions. Records shall be kept of the issuance of such
12 equipment to each employee.” 8 C.C.R. § 8414(j).

13 133. The Cal OSHA special order on PPE standard provides, in relevant part, “The
14 employer shall assess the workplace to determine if hazards are present, or are likely to be present,
15 which necessitate the use of personal protective equipment (PPE). If such hazards are present, or
16 likely to be present, the employer shall: (A) Select, and have each affected employee use, the type
17 of PPE that will protect the affected employee from the hazards identified in the hazard
18 assessment; (B) Communicate selection decisions to each affected employee; and (C) Select PPE
19 that properly fits each affected employee.” 8 C.C.R. § 3380(f)(1).

20 134. The California regulation regarding Aerosol Transmissible Diseases (“ATD”)
21 applies to workers in health care facilities, including clinics, medical offices, and other outpatient
22 medical facilities. 8 C.C.R. § 5199(a)(1)(A)(3) (the “ATD Standard”). According to the California
23 Department of Industrial Relations and the United States Department of Labor, COVID-19 is
24 subject to the ATD Standard.

25 135. Dr. Feldman refused to remove his PPE as demanded by Defendants, which would
26 have resulted in a violation of the above state and federal regulations, as well as California Labor
27 Code sections 6400, 6401, 6401.7, 6402, 6403, 6404, 6406, and 6407. Employer Defendants also
28 terminated Dr. Feldman in part for his refusal to comply with Defendants’ instructions to not wear

1 masks and gloves around Las Encinas patients.

2 136. As a proximate result of the wrongful conduct of Defendants, and each of them, Dr.
3 Feldman has suffered and continues to sustain substantial losses in earnings and other employment
4 benefits in an amount according to proof at the time of trial.

5 137. As a proximate result of the wrongful conduct of Defendants, and each of them, Dr.
6 Feldman has suffered emotional distress and other general damages, in an amount according to
7 proof at the time of trial.

8 138. The actions of Defendants as alleged herein were carried out with malice, willfulness
9 and/or reckless indifference to Dr. Feldman's rights, with full knowledge of their unlawfulness,
10 and with the intent to deprive Dr. Feldman of rights guaranteed under the law. Dr. Feldman is
11 entitled to punitive damages for the purpose of deterring such unlawful, malicious, oppressive
12 and/or reckless conduct. Defendants' conduct described herein was engaged in by officers,
13 directors, and/or managing agents for Employer Defendants and/or ratified by officers, directors,
14 and/or managing agents.

15 **NINTH CAUSE OF ACTION**

16 **FAILURE TO INDEMNIFY FOR NECESSARY BUSINESS EXPENDITURES, IN**

17 **VIOLATION OF LABOR CODE §§ 2802, 450, 6403(a)**

18 **(Against All Defendants)**

19 139. Plaintiff incorporates by reference and re-alleges the allegations contained in
20 paragraphs 1 through 138, inclusive, as though fully set forth herein.

21 140. At all relevant times, Labor Code sections 2802, 2804, 450, and 6400 were in full
22 force and effect and were binding on Employer Defendants.

23 141. Labor Code section 2802(a) provides, "An employer shall indemnify his or her
24 employee for all necessary expenditures or losses incurred by the employee in direct consequence
25 of the discharge of his or her duties, or of his or her obedience to the directions of the employer..."

26 142. Labor Code section 2804 provides, "Any contract or agreement, express or implied,
27 made by any employee to waive the benefits of this article or any part thereof is null and void, and
28 this article shall not deprive any employee or his personal representative of any right or remedy to

1 which he is entitled under the laws of this State.”

2 143. Labor Code section 450(a) provides, “No employer, or agent or officer thereof, or
3 other person, may compel or coerce any employee, or applicant for employment, to patronize his or
4 her employer, or any other person, in the purchase of any thing of value.” Section 450(b)(2)
5 provides, “For purposes of this section, to compel or coerce the purchase of any thing of value
6 includes, but is not limited to, instances where an employer requires the payment of a fee or
7 consideration of any type from an applicant for employment for any of the following purposes: (2)
8 For an individual to receive, obtain, complete, or submit an application for employment.”

9 144. Labor Code section 6403(a) provides, “No employer shall fail or neglect to...(a)
10 provide and use safety devices and safeguards reasonably adequate to render the employment and
11 place of employment safe.”

12 145. Employer Defendants, as a matter of their established policy and practices, required
13 Dr. Feldman and others to personally incur necessary expenditures as a precursor to obtaining
14 employment and in direct consequence of the discharge of their duties, including but not limited to:
15 having to purchase professional liability insurance or procure optional extension period coverage
16 (“tail coverage”) if the existing policy terminated for any reason (per the terms of their
17 employment agreement); having to assume the employer’s tax liability; having to provide their
18 own Workers’ Compensation coverage; having to indemnify Las Encinas for and against any
19 payments, penalties or interest Las Encinas might have to pay to the Internal Revenue Service or
20 any other governmental entity should that entity determine or others were misclassified and were
21 actually employees; and having to provide their own PPE for safe workplace practices.

22 146. Employer Defendants were legally required to reimburse Dr. Feldman and others
23 similarly aggrieved for all necessary business expenditures but failed to do so, including but not
24 limited to the above expenditures.

25 147. Labor Code section 558.1(a) provides, in relevant part, “Any employer or other
26 person acting on behalf of an employer, who violates, or causes to be violated...Section[]...2802,
27 may be held liable as the employer for such violation.” Section 558.1(b) clarifies, “For purposes of
28 this section, the term ‘other person acting on behalf of an employer’ is limited to a natural person

1 who is an owner, director, officer, or managing agent of the employer, and the term ‘managing
2 agent’ has the same meaning as in subdivision (b) of Section 3294 of the Civil Code.”

3 148. Pursuant to Section 558.1, both Asmus and Dr. Suzuki are personally liable, in their
4 capacities as directors, officers, or managing agents of Employer Defendants, for their actions in
5 failing to indemnify Dr. Feldman and others from all necessary business expenditures or losses.

6 149. Pursuant to Section 450, both Asmus and Dr. Suzuki are personally liable, in their
7 capacities as agents or officers of Employer Defendants, for their actions in compelling or coercing
8 Dr. Feldman and others to purchase the above expenditures from “any other person” in exchange
9 for Dr. Feldman’s and others’ employment, or continued employment.

10 150. As a proximate result of the above violations of Labor Code sections 2802(a),
11 6403(a), and 450(a), Dr. Feldman has been damaged in an amount according to proof at the time of
12 trial.

13 151. Pursuant to Labor Code section 2802(b), Dr. Feldman seeks an award of interest at
14 the same rate as judgments in civil actions, accruing from the date on which Dr. Feldman incurred
15 the necessary expenditure or loss.

16 152. Pursuant to Labor Code section 2802(c), Plaintiff seeks to recover all reasonable
17 costs, which includes but is not limited to attorney’s fees, incurred in enforcing Section 2802.

18 **TENTH CAUSE OF ACTION**

19 **DECLARATORY JUDGMENT**

20 **(Against All Defendants)**

21 153. Plaintiff incorporates by reference and re-alleges the allegations contained in
22 paragraphs 1 through 152, inclusive, as though fully set forth herein.

23 154. Government Code § 12920 provides that “the public policy of [the State of
24 California is] that it is necessary to protect and safeguard the right and opportunity of all persons to
25 seek, obtain, and hold employment without discrimination or abridgment on account of...physical
26 disability...It is recognized that the practice of denying employment opportunity and
27 discriminating in the terms of employment for [this] reason foments domestic strife and unrest,
28 deprives the state of the fullest utilization of its capacities for development and advancement, and

1 substantially and adversely affects the interests of employees, employers, and the public in general.
2 Further, the practice of discrimination because of...physical disability...is declared to be against
3 public policy.”

4 155. Government Code § 12920.5 embodies the Legislature’s intent, providing, “In order
5 to eliminate discrimination, it is necessary to provide effective remedies that will both prevent and
6 deter unlawful employment practices and redress the adverse effects of those practices on
7 aggrieved persons.”

8 156. Further, pursuant to Government Code § 12921, “The opportunity to seek, obtain,
9 and hold employment without discrimination because of...physical disability...is hereby
10 recognized as and declared to be a civil right.”

11 157. An actual controversy has arisen and now exists between Plaintiff and Defendants
12 concerning their respective rights and duties as it is believed that Defendants may contend that they
13 did not discriminate against, retaliate against, and/or discharge Plaintiff as a result of Plaintiff’s
14 association with his disabled mother-in-law or engagement in protected activities, or some
15 combination of these protected characteristics. Plaintiff alleges Defendants did discriminate and
16 retaliate against him because of his association with his disabled mother-in-law or engagement in
17 protected activities, or some combination of these protected characteristics. Plaintiff is informed
18 and believes, and on that basis alleges, that Defendants will dispute Plaintiff’s allegations.

19 158. Pursuant to Code of Civil Procedure § 1060, Plaintiff seeks a judicial determination
20 of Plaintiff’s rights and duties, and a declaration that Defendants discriminated against, retaliated
21 against, and discharged Plaintiff as a result of Plaintiff’s association with his disabled mother-in-
22 law or engagement in protected activities, or some combination of these protected characteristics.

23 159. Pursuant to Code of Civil Procedure § 1060, Plaintiff seeks a judicial determination
24 of Plaintiff’s rights and duties, and a declaration that Plaintiff’s association with his disabled
25 mother-in-law or engagement in protected activities, or some combination of these protected
26 characteristics, was a substantial motivating factor in Defendants’ decision to terminate Plaintiff.

27 160. A judicial declaration is necessary and appropriate so that Plaintiff, on his own
28 behalf and on behalf of employees in the State of California, and in conformity with the public

1 policy of the State, obtain a judicial declaration of Defendants' wrongdoing and to prospectively
2 condemn such discriminatory employment policies or practices. *Harris v. City of Santa Monica*
3 (2013) 56 Cal.4th 203.

4 161. A judicial declaration is necessary and appropriate so that Defendants may also be
5 aware of their obligations under the law to not engage in discriminatory employment practices and
6 to not violate the law in the future.

7 162. Plaintiff is entitled to recover prevailing party attorney's fees and costs pursuant to
8 Gov't Code section 12965(b) to redress, prevent, or deter discrimination.

9 **ELEVENTH CAUSE OF ACTION**

10 **WRONGFUL TERMINATION IN VIOLATION OF PUBLIC POLICY**

11 **(Against Employer Defendants)**

12 163. Plaintiff incorporates by reference and re-alleges the allegations contained in
13 paragraphs 1 through 162, inclusive, as though fully set forth herein.

14 164. Dr. Feldman's employment was terminated because of Defendants' violation of
15 fundamental and substantial public policies that were well-established at the time of his termination.
16 Specifically, it is against fundamental California public policy to retaliate against an employee for
17 requesting a reasonable accommodation for the disability of a close family member with whom the
18 employee is associated, and to retaliate against an employee for engaging in protected activities,
19 including creating a safe workplace and refusing to follow instructions that would contribute to an
20 unsafe work environment – particularly during a pandemic – as detailed in the First through Eighth
21 Causes of Action and recognized under Gov't Code sections 12940(a), 12940(h), 12940(k),
22 12940(m), 12940(n), and 12940(o), and Labor Code sections 232.5, 1102.5, 6400, 6401, 6401.7,
23 6402, 6403, 6404, 6406, 6407, 6310 and 6311.

24 165. As a proximate result of the wrongful conduct of Defendants, and each of them,
25 Plaintiff has suffered and continues to sustain substantial losses in earnings and other employment
26 benefits in an amount according to proof at the time of trial.

27 166. As a proximate result of the wrongful conduct of Defendants, and each of them, Dr.
28 Feldman has suffered emotional distress and other general damages, in an amount according to

1 proof at the time of trial.

2 167. The actions of Defendants as alleged herein were carried out with malice, willfulness
3 and/or reckless indifference to Dr. Feldman's, with full knowledge of their unlawfulness, and with
4 the intent to deprive Dr. Feldman of rights guaranteed under the law. Dr. Feldman is entitled to
5 punitive damages for the purpose of deterring such unlawful, malicious, oppressive and/or reckless
6 conduct. Employer Defendants' conduct described herein was engaged in by officers, directors,
7 and/or managing agents for Employer Defendants and/or ratified by officers, directors, and/or
8 managing agents.

9 **TWELFTH CAUSE OF ACTION**

10 **CIVIL PENALTIES PURSUANT TO LABOR CODE § 2699**

11 **(On Behalf of All Aggrieved Employees)**

12 **(Against Las Encinas and Does 1 to 100)**

13 168. Plaintiff incorporates by reference and re-alleges the allegations contained in
14 paragraphs 1 through 167, inclusive, as though fully set forth herein.

15 169. In addition to the above enumerated violations of Labor Code sections 232.5, 450,
16 1102.5(b) and (c), and 2802, at all relevant times, Labor Code section 432.5 was in full force and
17 effect and was binding on Defendants.

18 170. Section 432.5 provides, "No employer, or agent, manager, superintendent, or officer
19 thereof, shall require any employee or applicant for employment to agree, in writing, to any term or
20 condition which is known by such employer, or agent, manager, superintendent, or officer thereof to
21 be prohibited by law."

22 171. Employer Defendants required Dr. Feldman to sign a Service Director Agreement
23 with Las Encinas acknowledging that he was an "independent contractor, and that nothing in [the]
24 Agreement is intended to, or shall be construed to, create an employee/employer relationship..."
25 The Agreement also provided, "[Dr. Feldman] understands that as a part of [Las Encinas]'s
26 workforce, [Dr. Feldman] is under the direct control of [Las Encinas]..." The Agreement further
27 provided that Dr. Feldman's job duties included "Develop[ing] and implement[ing] community and
28 professional education programs" for Las Encinas and the USC students "as directed by the Chief

Executive Officer and the Board of Directors” of Las Encinas.

172. Upon information and belief, Dr. Feldman alleges that Employer Defendants required other doctors and/or Las Encinas personnel to sign similar employment agreements willfully misclassifying them as independent contractors instead of employees.

173. The test for employment under the common law is whether a putative employer has the right to control the work of the person rendering labor services, specifically “the manner and means of accomplishing the result desired...” *S.G. Borello & Sons, Inc. v. Dept. of Indus. Relations* (1989) 48 Cal.3d 341, 350 and 357 (fn9). By contrast, an independent contractor is defined for worker’s compensation purposes as “any person who renders service for a specified recompense for a specified result, under the control of his principal as to the result of his work only and not as to the means by which such result is accomplished.” Lab. Code § 3353. Employer Defendants controlled the manner and means by which Dr. Feldman treated Las Encinas patients.

174. Employer Defendants knew that misclassifying Dr. Feldman as an independent contractor was illegal, yet Defendants required Dr. Feldman to agree to such a term so that he would be forced to waive his rights and protections as an employee under the law, including but not limited to Dr. Feldman’s rights under the FEHA, his right to a safe and healthy work environment, his right to worker’s compensation protection, his right to unemployment insurance benefits, his right to paid sick days, and his right to paid family leave.

175. At all relevant times, Labor Code sections 6400, 6401, 6401.7, 6402, 6403, 6404, 6406, and 6407 were in full force and effect and were binding on Defendants.

176. Labor Code section 6400 provides, “Every employer shall furnish employment and a place of employment that is safe and healthful for the employees therein.”

177. Labor Code section 6401 provides, “Every employer shall furnish and use safety devices and safeguards, and shall adopt and use practices, means, methods, operations, and processes which are reasonably adequate to render such employment and place of employment safe and healthful. Every employer shall do every other thing reasonably necessary to protect the life, safety, and health of employees.”

178. To that end, employers must establish, implement, and maintain an effective Injury

1 and Illness Prevention Program (“IIPP”) which, at a minimum, must include a system for ensuring
2 that employees comply with safe and healthy work practices. 8 C.C.R. § 3203; Lab. Code § 6401.7.
3 The IIPP must include, *inter alia*, a written system for identifying and evaluating workplace
4 hazards, the employer’s methods and procedures for correcting unsafe or unhealthy conditions and
5 work practices in a timely manner, and provisions designed to encourage employees to inform the
6 employer of workplace hazards without fear of reprisal. *Id.*

7 179. Labor Code section 6402 provides, “No employer shall require, or permit an employee
8 to go or be in any employment or place of employment which is not safe or healthful.” Labor Code
9 section 6404 provides, “No employer shall occupy or maintain any place of employment that is not
10 safe and healthful.”

11 180. Labor Code section 6403 provides, “No employer shall fail or neglect to...(a) provide
12 and use safety devices and safeguards reasonably adequate to render the employment and place of
13 employment safe...” Section 6403 further provides that an employer must “do every other thing
14 reasonably necessary to protect the life, safety, and health of employees.”

15 181. Labor Code section 6406 provides, “No person shall...Interfere in any way with the
16 use [of any safety device or safeguard for use in the workplace] by any other person.” Labor Code
17 section 6406 further provides, “No person shall...Fail or neglect to do every other thing reasonably
18 necessary to protect the life, safety, and health of employees.”

19 182. Labor Code section 6407 provides, “Every employer and every employee shall comply
20 with occupational safety and health standards...”

21 183. Employer Defendants failed to establish, implement, and maintain an effective IIPP,
22 including educating Dr. Feldman and other aggrieved employees about the health risks of possible
23 exposure to and transmission of COVID-19 and ensuring that employees would comply with safe
24 and healthy workplace practices or report unsafe practices without fear of reprisal.

25 184. Employer Defendants violated Cal OSHA, as set forth above, by failing to provide and
26 maintain a safe and healthy work environment for Dr. Feldman and other aggrieved employees.

27 185. Pursuant to Labor Code section 2699(a) (which provides that any provision of the
28 Labor Code that provides for a civil penalty to be assessed and collected by the LWDA (or any of

its departments, divisions, commissions, board agencies or employees) or the Division of Occupational Safety and Health may, as an alternative, be recovered through a civil action brought by an aggrieved employee on behalf of herself or herself and other current or former employees) and Labor Code sections 226.8(b) and (c), 1102.5(f), 6401.7(j)(1), and 2699(f) (which establishes a civil penalty for violations of all Labor Code provisions except those for which a civil penalty is specifically provided), Plaintiff seeks recovery of all applicable civil penalties, as follows:

- a. As applicable, for civil penalties under Labor Code § 2699(f), for all violations of the Labor Code except for those for which a civil penalty is specifically provided, in this case for violations of Labor Code §§ 232.5, 432.5, 450, 2802, 6400, 6401, 6402, 6403, 6406, and 6407 in the amount of one hundred dollars (\$100.00) for each aggrieved employee per pay period for the initial violation; and two hundred dollars (\$200.00) for each aggrieved employee per pay period for each subsequent violation;
- b. As applicable for a civil penalty under Labor Code § 6401.7(j)(1) for Employer Defendants' failure to establish, implement, and maintain an effective Injury and Illness Prevention Program;
- c. As applicable, for civil penalties under Labor Code § 226.8(b) for not less than five thousand dollars (\$5,000.00) and not more than fifteen thousand dollars (\$15,000.00) for each violation of willful misclassifications of aggrieved employees as independent contractors;
- d. As applicable, for civil penalties under Labor Code § 226.8(c) for not less than ten thousand dollars (\$10,000.00) and not more than twenty-five thousand dollars (\$25,000.00) per violation for engaging in a pattern or practice of these violations;
- e. As applicable, for civil penalties under Labor Code § 1102.5(f) not to exceed ten thousand dollars (\$10,000) for each violation of Section 1102.5 (subdivisions (b), (c), or (d));

186. In addition, Plaintiff seeks and is entitled to seventy-five percent (75%) of all civil penalties obtained under Labor Code sections 1102.5 and 2699 to be allocated to the LWDA, for education of employers and employees about their rights and responsibilities under the Labor Code,

1 and twenty-five percent (25%) to all aggrieved employees.

2 187. Further, Plaintiff is entitled to recover reasonable attorneys' fees and costs pursuant
3 to Labor Code section 2699(g)(1) and any other applicable statute.

4 188. Labor Code section 2699.3(a) states in pertinent part: "A civil action by an aggrieved
5 employee pursuant to subdivision (a) or (f) of Section 2699 alleging a violation of any provision
6 listed in Section 2699.5 shall commence only after the following requirements have been met: (1)
7 (A) The aggrieved employee or representative shall give written notice by online filing with the
8 Labor and Workforce Development Agency and by certified mail to the employer of the specific
9 provisions of this code alleged to have been violated, including the facts and theories to support the
10 alleged violation."

11 189. Labor Code §2699.3(c)(1) states in pertinent part: "A civil action by an aggrieved
12 employee pursuant to subdivision (a) or (f) of Section 2699 alleging a violation of any provision
13 other than those listed in Section 2699.5 or Division 5 (commencing with Section 6300) shall
14 commence only after the following requirements have been met: (1) (A) The aggrieved employee or
15 representative shall give written notice by online filing with the Labor and Workforce Development
16 Agency and by certified mail to the employer of the specific provisions of this code alleged to have
17 been violated, including the facts and theories to support the alleged violation."

18 190. Here, Plaintiff's civil action alleges violations of provisions listed in Labor Code
19 section 2699.5 and violations of provisions other than those listed in Section 2699.5. As such, Labor
20 Code sections 2699.3(a) and 2699.3(c) apply to this action.

21 191. Labor Code §2699.3(a) further states in pertinent part: "(2)(A) The agency shall
22 notify the employer and the aggrieved employee or representative by certified mail that it does not
23 intend to investigate the alleged violation within 60 calendar days of the postmark date of the notice
24 received pursuant to paragraph (1). Upon receipt of that notice or if no notice is provided within 65
25 calendar days of the postmark date of the notice given pursuant to paragraph (1), the aggrieved
26 employee may commence a civil action pursuant to Section 2699."

27 192. As of November 8, 2020 (65 calendar days after the September 4, 2020 Amended
28 PAGA notice was filed online), Plaintiff had not received any notification that the LWDA intended

1 to investigate the alleged violations. As such, Plaintiff has complied with Labor Code section
2 2699.3(a) and has been authorized therefrom to commence a civil action which includes a cause of
3 action pursuant to Labor Code section 2699.

4 193. Further, as of October 7, 2020 (33 calendar days after Plaintiff's September 4, 2020
5 Amended PAGA notice was mailed to Las Encinas via certified mail), Plaintiff has not received
6 from Defendants written notice by certified mail that the alleged violations have been cured,
7 including a description of actions taken. As such, Plaintiff has complied with Labor Code section
8 2699.3(c) and has been authorized therefrom to commence a civil action which includes a cause of
9 action pursuant to Labor Code section 2699.

10 194. Moreover, as of December 28, 2020 (six months after the original June 26, 2020
11 PAGA notice was filed online and mailed to the Division of Occupational Safety and Health
12 ("DOSH") via certified mail), Plaintiff had not received any notification that the DOSH issued a
13 citation or notice to Employer Defendants for the alleged Cal OSHA violations. As such, Plaintiff
14 has complied with Labor Code section 2699.3(b)(1) and has been authorized therefrom to
15 commence a civil action which includes civil penalties for violations of Cal OSHA.

16 **THIRTEENTH CAUSE OF ACTION**

17 **RETALIATION, IN VIOLATION OF HEALTH & SAFETY CODE § 1278.5**

18 **(Against Employer Defendants)**

19 195. Plaintiff incorporates by reference and re-alleges the allegations contained in
20 paragraphs 1 through 193, inclusive, as though fully set forth herein.

21 196. At all relevant times, Health and Safety Code ("H&S") section 1278.5 was in full
22 force and effect and was binding on Defendants. Section 1278.5(b)(1) provides, in relevant part, "A
23 health facility shall not discriminate or retaliate, in any manner, against a patient, employee,
24 member of medical staff, or other health care worker of the health facility because that person
25 has...presented a grievance, complaint, or report to the facility, to an entity or agency responsible
26 for accrediting or evaluating the facility, or the medical staff of the facility, or to any other
27 governmental entity."

28 197. Section 1278.5(b)(2) further provides, "An entity that owns or operates a health

1 facility, or that owns or operates any other health facility, shall not discriminate or retaliate against
2 a person because that person has taken any actions pursuant to this subdivision.”

3 198. Both Las Encinas and Signature owned or operated Las Encinas Hospital, a health
4 facility as defined by H&S section 1250, and Signature owned or operated other health facilities in
5 California.

6 199. Employer Defendants hired Dr. Feldman to be their Co-Director for PHP/IOP
7 Services and to supervise medical students from USC, Keck School of Medicine (of whose faculty
8 Dr. Feldman was a member) and required Dr. Feldman to “Participate in the Facility’s needs
9 assessment, quality assurance, utilization review and peer review programs,” to “Assist in
10 recruiting physicians and allied health professionals” in furtherance of his position, and to perform
11 his duties “as directed by the Chief Executive Officer [Defendant Asmus] and the Board of
12 Directors” of Las Encinas. Dr. Feldman worked at Las Encinas Hospital.

13 200. Dr. Feldman reported to Dr. Suzuki – a person with authority over Plaintiff – that he
14 did not feel safe working at the facility without the PPE he brought from home for fear of
15 transmitting COVID-19 to his 91-year-old disabled mother-in-law whom he was caring for at
16 home. Dr. Feldman reasonably believed that working without a facemask and gloves while coming
17 into contact with patients who potentially carried the novel coronavirus, whether or not they
18 exhibited any symptoms, violated state and federal guidelines, as well as state and federal laws
19 regarding maintaining a safe and healthy workplace. Dr. Feldman also complained to Asmus,
20 through his executive secretary, that the medical records sink lacked soap for handwashing.
21 Employer Defendants terminated Dr. Feldman, in part, in retaliation for the above disclosures.

22 201. As a proximate result of the wrongful conduct of Defendants, and each of them, Dr.
23 Feldman has suffered and continues to sustain substantial losses in earnings and other employment
24 benefits in an amount according to proof at the time of trial.

25 202. As a proximate result of the wrongful conduct of Defendants, and each of them, Dr.
26 Feldman has suffered emotional distress and other general damages, in an amount according to
27 proof at the time of trial.

28 203. The actions of Defendants as alleged herein were carried out with malice, willfulness

1 and/or reckless indifference to Dr. Feldman's rights, with full knowledge of their unlawfulness,
2 and with the intent to deprive Dr. Feldman of rights guaranteed under the law. Dr. Feldman is
3 entitled to punitive damages for the purpose of deterring such unlawful, malicious, oppressive
4 and/or reckless conduct. Defendants' conduct described herein was engaged in by officers,
5 directors, and/or managing agents for Employer Defendants and/or ratified by officers, directors,
6 and/or managing agents.

7 204. Under Section 1278.5(g), Plaintiff is entitled to recover "the legal costs associated
8 with pursuing the case...[and] any remedy deemed warranted by the court pursuant to this chapter
9 or any other applicable provision of statutory or common law," including attorney's fees.

10
11 **PRAYER FOR RELIEF**

12 WHEREFORE, Plaintiff prays for judgment as follows:

- 13 1. For an award of damages in an amount according to proof with interest thereon;
14 2. For compensatory and general damages in an amount according to proof;
15 3. For past and future lost income and benefits;
16 4. For punitive damages;
17 5. For injunctive relief;
18 6. For restitution to the full extent permitted by law;
19 7. For civil penalties pursuant to Labor Code §§ 1102.5(f) and 2699(f);
20 8. For reasonable attorney's fees and costs; and
21 9. For such other and further relief as this Court deems just and proper.

22 **DEMAND FOR JURY TRIAL**

23 Plaintiff hereby requests a jury trial on the claims so triable.

24
25 DATED: January 22, 2021

SANSANOWICZ LAW GROUP, PC.

26 

27 Leonard H. Sansanowicz, Esq.
28 Attorneys for Plaintiff Clifford R. Feldman, M.D.

Exhibit A



DEPARTMENT OF FAIR EMPLOYMENT & HOUSING

KEVIN KISH, DIRECTOR

2218 Kausen Drive, Suite 100 | Elk Grove | CA | 95758
(800) 884-1684 (Voice) | (800) 700-2320 (TTY) | California's Relay Service at 711
<http://www.dfeh.ca.gov> | Email: contact.center@dfeh.ca.gov

June 17, 2020

Leonard H Sansanowicz
1635 Pontius Avenue, Second Floor
Los Angeles, California 90025

RE: **Notice to Complainant's Attorney**
DFEH Matter Number: 202006-10441817
Right to Sue: Feldman / Aurora Las Encinas, LLC

Dear Leonard H Sansanowicz:

Attached is a copy of your complaint of discrimination filed with the Department of Fair Employment and Housing (DFEH) pursuant to the California Fair Employment and Housing Act, Government Code section 12900 et seq. Also attached is a copy of your Notice of Case Closure and Right to Sue.

Pursuant to Government Code section 12962, DFEH will not serve these documents on the employer. You must serve the complaint separately, to all named respondents. Please refer to the attached Notice of Case Closure and Right to Sue for information regarding filing a private lawsuit in the State of California. A courtesy "Notice of Filing of Discrimination Complaint" is attached for your convenience.

Be advised that the DFEH does not review or edit the complaint form to ensure that it meets procedural or statutory requirements.

Sincerely,

Department of Fair Employment and Housing



DEPARTMENT OF FAIR EMPLOYMENT & HOUSING

KEVIN KISH, DIRECTOR

2218 Kausen Drive, Suite 100 | Elk Grove | CA | 95758
(800) 884-1684 (Voice) | (800) 700-2320 (TTY) | California's Relay Service at 711
<http://www.dfeh.ca.gov> | Email: contact.center@dfeh.ca.gov

June 17, 2020

RE: **Notice of Filing of Discrimination Complaint**
DFEH Matter Number: 202006-10441817
Right to Sue: Feldman / Aurora Las Encinas, LLC

To All Respondent(s):

Enclosed is a copy of a complaint of discrimination that has been filed with the Department of Fair Employment and Housing (DFEH) in accordance with Government Code section 12960. This constitutes service of the complaint pursuant to Government Code section 12962. The complainant has requested an authorization to file a lawsuit. This case is not being investigated by DFEH and is being closed immediately. A copy of the Notice of Case Closure and Right to Sue is enclosed for your records.

Please refer to the attached complaint for a list of all respondent(s) and their contact information.

No response to DFEH is requested or required.

Sincerely,

Department of Fair Employment and Housing



DEPARTMENT OF FAIR EMPLOYMENT & HOUSING

KEVIN KISH, DIRECTOR

2218 Kausen Drive, Suite 100 | Elk Grove | CA | 95758
(800) 884-1684 (Voice) | (800) 700-2320 (TTY) | California's Relay Service at 711
<http://www.dfeh.ca.gov> | Email: contact.center@dfeh.ca.gov

June 17, 2020

Clifford R. Feldman
1635 Pontius Avenue, Second Floor
Los Angeles, 90025

RE: **Notice of Case Closure and Right to Sue**
DFEH Matter Number: 202006-10441817
Right to Sue: Feldman / Aurora Las Encinas, LLC

Dear Clifford R. Feldman,

This letter informs you that the above-referenced complaint was filed with the Department of Fair Employment and Housing (DFEH) has been closed effective June 17, 2020 because an immediate Right to Sue notice was requested. DFEH will take no further action on the complaint.

This letter is also your Right to Sue notice. According to Government Code section 12965, subdivision (b), a civil action may be brought under the provisions of the Fair Employment and Housing Act against the person, employer, labor organization or employment agency named in the above-referenced complaint. The civil action must be filed within one year from the date of this letter.

To obtain a federal Right to Sue notice, you must contact the U.S. Equal Employment Opportunity Commission (EEOC) to file a complaint within 30 days of receipt of this DFEH Notice of Case Closure or within 300 days of the alleged discriminatory act, whichever is earlier.

Sincerely,

Department of Fair Employment and Housing

**COMPLAINT OF EMPLOYMENT DISCRIMINATION
BEFORE THE STATE OF CALIFORNIA
DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING
Under the California Fair Employment and Housing Act
(Gov. Code, § 12900 et seq.)**

In the Matter of the Complaint of

Clifford R. Feldman

DFEH No. 202006-10441817

Complainant,

vs.

Aurora Las Encinas, LLC
2900 E. Del Mar Boulevard
Pasadena, California 91107

Respondents

1. Respondent **Aurora Las Encinas, LLC** is an **employer** subject to suit under the California Fair Employment and Housing Act (FEHA) (Gov. Code, § 12900 et seq.).

2. Complainant **Clifford R. Feldman**, resides in the City of **Los Angeles** State of .

3. Complainant alleges that on or about **June 1, 2020**, respondent took the following adverse actions:

Complainant was discriminated against because of complainant's disability (physical or mental) and as a result of the discrimination was terminated, denied reasonable accommodation for a disability, denied work opportunities or assignments.

Complainant experienced retaliation because complainant requested or used a disability-related accommodation and as a result was terminated, denied reasonable accommodation for a disability.

Additional Complaint Details: Complainant, a psychiatrist, was Co-Director of Respondent's Partial Hospitalization Programs and Intensive Outpatient Programs, and was tasked with supervising USC, Keck School of Medicine students at Respondent's premises, an acute psychiatric facility, from approximately March 1, 2014 through his involuntary and wrongful termination effective May 31, 2020. Complainant cares for his 91-year-old mother-in-law who lives with Complainant and

1 his wife and who has existing disabilities; Complainant informed Respondent of his
2 caretaking responsibilities and detailed his mother-in-law's disabilities to
3 Respondent's Medical Director (Complainant's direct medical boss) and to
4 Respondent's CEO and Human Resources department. Specifically, Complainant
5 was very worried he might contract the 2019 novel coronavirus ("SARS-CoV-2," or
6 "COVID-19") or become a carrier and bring the disease home with him and thereby
7 infect his mother-in-law, whom he informed Respondent was "extremely susceptible"
8 to contracting COVID-19. Complainant asked Respondent's Medical Director what
9 type of personal protective equipment ("PPE") he should wear to work, and the
10 Medical Director strongly discouraged Complainant from wearing a mask, telling
11 Claimant that he (the Medical Director) was concerned that the sight of Complainant
12 in a mask might cause patients and other employees to panic, and specifically that
13 other employees would demand to wear masks, too.

14 On or about March 30, 2020, Complainant showed up to work wearing a white
15 painter's mask, safety goggles over his prescription glasses, and gloves, all of which
16 was PPE he was able to find at home (it was not provided to him by Respondent).
17 No other employees were wearing masks. Respondent's CEO saw Claimant
18 wearing his homemade PPE and became visibly upset; the CEO confronted
19 Claimant briefly, saying something to the effect of, "What is that?" and then walked
20 away with a disgusted look. Approximately two weeks later, Respondent's CEO
21 noticed Claimant's termination in writing. Respondent gave no reason for the
22 termination, specifying that it was a termination without cause. Claimant had no prior
23 discipline, nor had he been made aware of any performance deficiencies.
24 Respondent discriminated against Complainant for being associated with a person
25 who has multiple disabilities and failed to engage in a timely good faith interactive
26 process, refused to make a reasonable accommodation for his associational
27 disability, and terminated Complainant's employment in retaliation for taking
28 precautions related to his association with a close disabled family member. Thus,
Respondent also failed to prevent discrimination and retaliation prohibited by the
Fair Employment and Housing Act.

1 VERIFICATION

2 I, **Leonard H Sansanowicz**, am the **Attorney** in the above-entitled complaint. I have
3 read the foregoing complaint and know the contents thereof. The matters alleged are
4 based on information and belief, which I believe to be true.

5 On June 17, 2020, I declare under penalty of perjury under the laws of the State of
6 California that the foregoing is true and correct.

7 **Los Angeles, CA**
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Exhibit B



SANSANOWICZ

LAW GROUP, P.C.

1635 Pontius Ave, Second Floor | Los Angeles, CA 90025

Tel: (323) 677-0200 | Fax: (323) 549-0101

September 4, 2020

VIA ELECTRONIC MAIL TO LABOR AND WORKFORCE DEVELOPMENT AGENCY

Check to be mailed to:
Department of Industrial Relations
Accounting Unit [payment of \$75.00 filing fee]
455 Golden Gate Avenue, 10th Floor
San Francisco, CA 94102

Re: Amended PAGA Notice re: Aurora Las Encinas, LLC and Signature Healthcare Services, LLC

NOTICE OF LABOR CODE VIOLATIONS PURSUANT TO LABOR CODE §2699.3

To: PAGA Administrator, Calif. Labor and Workforce Development Agency, and Employer

From: Clifford R. Feldman, M.D., subjected to the Labor Code violations set forth below

Dr. Feldman, through his counsel, submits this Amended Notice, pursuant to and in compliance with the requirements of California Labor Code §2699.3(a)/(c), and alleges the facts and theories to support the below alleged violations. This Notice relates back to the Notice that Employee submitted on June 26, 2020, LWDA Case No. LWDA-CM-794775-20, initially against Aurora Las Encinas, LLC ("Las Encinas"). Dr. Feldman filed a civil action against Las Encinas without civil penalties. Subsequently, Dr. Feldman learned it would be appropriate to name Signature Healthcare Services, LLC ("Signature") as a joint employer with Las Encinas (collectively with Signature, "Employers") of Dr. Feldman. Dr. Feldman has filed an amended complaint against Employers, adding civil penalties against Las Encinas but not yet against Signature, and unless the Labor & Workforce Development Agency ("LWDA") proceeds against Employers, Dr. Feldman intends to amend his complaint to seek attorney fees and penalties under the Labor Code Private Attorneys General Act of 2004 ("PAGA") against both Las Encinas and Signature.

Employers employed Dr. Feldman, a psychiatrist, as Co-Director of Employers' Partial Hospitalization Programs and Intensive Outpatient Programs, as well as to supervise USC, Keck School of Medicine students at Employers' premises, a stand-alone acute psychiatric facility, from March 1, 2014 through Dr. Feldman's involuntary and wrongful termination effective May 31, 2020.

During the applicable period, Employers utilized consistent policies and procedures regarding Dr. Feldman and others similarly aggrieved, allegedly in violation of Labor Code §§ 226.8, 232.5, 432.5, 450, 1102.5, 2802, 6401.7, 6403, 6310, and 6311, as follows:

First, Employer required Dr. Feldman and other similarly aggrieved employees to sign employment contracts, as a condition of their employment with Employer, that purported to classify the employees as independent contractors instead of employees. Employer knew that misclassifying Dr. Feldman and other aggrieved employees as independent contractors was illegal pursuant to Labor Code § 226.8, yet Employer required Dr. Feldman and similarly aggrieved employees to agree to such a term so that they would be forced to waive their rights and protections as employees under the law, including but not limited to their rights under the Fair Employment and Housing Act, their rights to a safe and healthy work environment, their rights to worker's compensation protection, their rights to unemployment insurance benefits, their rights to paid sick days, and their rights to paid family leave, all in violation of Labor Code § 432.5. As such, Employer owes penalties under Labor Code §§ 226.8(b) and (c), as well as Labor Code § 2699(f).

Second, Employers required Dr. Feldman and other similarly aggrieved employees who Employers misclassified as independent contractors to personally incur necessary expenditures as a precursor to obtaining employment and in direct consequence of the discharge of their duties, including but not limited to: having to purchase professional liability insurance or procure optional extension period coverage ("tail coverage") if the existing policy terminated for any reason (per the terms of their employment agreement); having to assume Employers' tax liability; having to provide their own Workers' Compensation coverage; having to indemnify Employers for and against any payments, penalties or interest Employer might have to pay to the Internal Revenue Service or any other governmental entity should that entity determine or others were misclassified and were actually employees; and having to provide their own personal protective equipment ("PPE") for safe workplace practices. This policy and/or practice violated Labor Code §§ 450, 2802, and 6403, and as such Employers owe penalties pursuant to Labor Code § 2699(f).

Third, Employers failed to establish, implement, and maintain an effective Injury and Illness Prevention Program ("IIPP") at Las Encinas which, at a minimum, included a system for ensuring that Dr. Feldman and other similarly aggrieved employees complied with safe and healthy work practices. In particular, Employers failed to draft a written system for identifying and evaluating workplace hazards, Employers' methods and procedures for correcting unsafe or unhealthy conditions and work practices in a timely manner, and provisions designed to encourage employees to inform the Employers of workplace hazards without fear of reprisal, in response to the 2019 novel coronavirus ("SARS-CoV-2," or "COVID-19"). As such, Employers violated Labor Code § 6401.7 and owe a civil penalty pursuant to Labor Code §§ 6401.7(j)(1) and 2699(f).

Fourth, Employers retaliated against Dr. Feldman for reporting to a person with authority over Dr. Feldman that Dr. Feldman reasonably believed that working with patients without a facemask and gloves while coming into contact with patients who potentially carried COVID-19, whether or not they exhibited any symptoms, violated state and federal guidelines, as well as state and federal laws regarding maintaining a safe and healthy workplace. Employers similarly retaliated against Dr. Feldman for reporting to a person with authority over Dr. Feldman that Dr. Feldman reasonably believed a sink intended for handwashing (and therefore disinfecting) lacked soap, which is a basic preventive measure that has proven extremely effective in preventing the spread of COVID-19. Both retaliatory motives violated Labor Code § 1102.5(b). Employers further retaliated against Employee for refusing to participate in an activity that would result in a violation of state or federal statute, or

violation of or noncompliance with a local, state, or federal rule or regulation, in violation of Labor Code § 1102.5(c), including the below-enumerated federal guidelines and state regulations.

While Dr. Feldman was on a long-planned vacation in mid-March 2020, he followed the developing COVID-19 outbreak throughout the United States. Dr. Feldman was very concerned about returning to a healthy work environment free of the disease, not just for himself, his co-workers, and the patients at Employers, but also because he was caring for his 91-year-old mother-in-law with pre-existing disabilities (which made her highly susceptible to contract the virus) at home and he was terrified he might inadvertently bring the disease home with him and transmit it to her. A few days before his return to work, Dr. Feldman called in to Las Encinas from his vacation to inquire what sort of PPE he should wear upon returning to work. Dr. Feldman's direct clinical boss (whom Dr. Feldman alleges was a managing agent within the meaning of Civil Code § 3294) directly and strongly discouraged Dr. Feldman from wearing PPE, telling Dr. Feldman that Employers did not want Dr. Feldman to wear PPE for fear that the sight of Dr. Feldman in a mask might cause patients and other employees to panic.

Dr. Feldman returned to work on or about March 30, 2020 and showed up to work wearing a white painter's mask, gloves, and safety goggles that fit over his prescription glasses, which was simply equipment Dr. Feldman already had at home. Las Encinas' C.E.O. saw Dr. Feldman wearing the homemade PPE, became visibly upset, and confronted Dr. Feldman briefly, saying something to the effect of, "What is that?" and then walked away with a disgusted look. Two weeks later, Las Encinas' C.E.O. informed Dr. Feldman in writing that his employment had been terminated. No reason was given for the termination. Dr. Feldman had not received any prior discipline, nor had Employers made Dr. Feldman aware of any performance deficiencies.

Failure to wear protective equipment, including protective equipment for the eyes, face, and hands, violates federal Occupational Safety and Health Administration ("OSHA") guidelines 1910.132(a) and 1910.138(a), as well as California regulations regarding the wearing of PPE when exposed to hazards in the workplace (8 C.C.R. § 8414(a)), maintaining PPE in good operating and sanitary conditions (8 C.C.R. § 8414(j)), assessing the workplace to determine if hazards are present which necessitate the use of PPE (8 C.C.R. § 3380(f)(1)), and regarding Aerosol Transmissible Diseases ("ATD"), 8 C.C.R. § 5199(a)(1)(A)(3) (the "ATD Standard"). According to the California Department of Industrial Relations and the United States Department of Labor, COVID-19 is subject to the ATD Standard. Dr. Feldman opposed Employers' demand that Dr. Feldman remove his PPE, which would have resulted in a violation of the above regulations, as well as Labor Code §§ 6400, 6401, 6401.7, 6402, 6403, 6404, 6406, and 6407.

Thus, Employers' conduct, through officers and/or managing agents, violated Labor Code §§ 1102.5(b) and 1102.5(c) and subjects Employers to a civil penalty pursuant to Labor Code § 1102.5(f).

Fifth, Labor Code § 6310(a)(4) makes it illegal for any person to discharge or in any manner discriminate against any employee if the employee has exercised any rights under the federal OSHA. Labor Code § 6310(b) makes it illegal for an Employers to discharge an employee or in any manner discriminate against the employee for making a complaint of unsafe working conditions. Dr. Feldman exercised his rights under OSHA and the Labor Code by complaining of having to work during a pandemic without PPE, and Employers retaliated against Dr. Feldman by stopping to assign patients to

Dr. Feldman (thereby slashing his pay and his job responsibilities) and then terminating his employment. Similarly, Labor Code §§ 6311 and 232.5 make it illegal for an Employers to discharge an employee, as here, for disclosing and/or refusing to work under hazardous working conditions, yet Employers terminated Dr. Feldman, in part, after he refused to work without PPE for fear of contracting COVID-19 and bringing it home to transmit to his 91-year-old disabled mother-in-law who was highly at risk for contracting and dying from the disease. As such, Employers violated Labor Code §§ 6310, 6311, and 232.5, and owes penalties pursuant to Labor Code § 2699(f).

Pursuant to Labor Code §2699.3(c)(2)(A), Employers may cure some of the alleged violations within thirty-three (33) calendar days of the postmark date of this notice and within that period, give notice by certified mail if the alleged violation is cured, including a description of actions taken.

We understand that if we do not receive a response within sixty-five (65) calendar days of the postmark and filing date of this notice that the LWDA intends to investigate these allegations and/or a notice from Employers that the alleged violations are cured, and/or if the alleged violations are not cured, then Employee may immediately thereafter commence a civil action against Employers pursuant to Labor Code § 2699. Please advise within sixty-five (65) calendar days of the postmark date of this notice whether the LWDA intends to investigate these alleged violations.

Thank you for your consideration.

Very Truly Yours,



Leonard H. Sansanowicz

cc (via certified mail):

- 7019 2280 0001 8023 7284, Aurora Las Encinas, LLC and Signature Healthcare Services, Inc., c/o Stephen L. Raucher, 12400 Wilshire Blvd., Suite 800, Los Angeles, CA 90025
- 7019 2280 0001 8023 7291, Division of Occupational Safety and Health, Attn: PAGA Administrator, 1515 Clay Street, Suite 801, Oakland, CA 94612

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- Print your name and address on the reverse so that we can return the card to you.
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1. Article Addressed to:

Division of Occupational
Safety & Health
Attn: PAGA Administrator
1515 Clay Street, Suite 801
Oakland, CA 94612



9590 9402 5468 9249 1175 96

2. Article Number (Transfer from service label)

7019 2280 0001 8023 7291

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

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19

☐ Agent

☐ Addressee

B. Received by (Printed Name)

C. Date of Delivery

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☐ Yes

☐ No

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☐ Insured Mail

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☐ Registered Mail Restricted Delivery

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1. Article Addressed to:

Stephen L. Raucher,
Reuben Raucher & Blum
12400 Wilshire Blvd., Suite 800
Los Angeles, CA 90025



9590 9402 5468 9249 1176 02

2. Article Number (Transfer from service label)

7019 2280 0001 8023 7284

PS Form 3811, July 2015 PSN 7530-02-000-9053

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X *Nathalie Quach*

☐ Agent

☐ Addressee

B. Received by (Printed Name)

Nathalie Quach

C. Date of Delivery

9/8/20

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type

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☐ Collect on Delivery Restricted Delivery

☐ Insured Mail

☐ Insured Mail Restricted Delivery (over \$500)

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☐ Signature Confirmation™

☐ Signature Confirmation Restricted Delivery

Domestic Return Receipt

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I, the undersigned, am over the age of 18 years and not a party to this action. My business address is 1635 Pontius Avenue, Second Floor, Los Angeles, CA 90025-3361, which is located in Los Angeles County, where the service herein occurred.

On the date of execution hereof, I caused to be served the following attached document:

THIRD AMENDED COMPLAINT FOR DAMAGES

on the interested parties in this action, addressed as follows:

Attorneys for Defendants Aurora Las Encinas, LLC, Daniel Suzuki, Trevor Asmus, and Signature Healthcare Services, LLC:

Stephen L. Raucher, Esq.
Trenton E. Hartzler, Esq.
Reuben Raucher & Blum
12400 Wilshire Boulevard, Suite 800
Los Angeles, California 90025
Telephone: (310) 777-1990
Facsimile: (310) 777-1989
Email: sraucher@rrbattorneys.com
Email: thartzler@rrbattorneys.com

using the following service method:

X VIA ELECTRONIC MAIL: Service by electronic mail was made either pursuant to a Court Order, pursuant to agreement between the parties permitting the same, or as a professional courtesy in addition to other proper service. The electronic mail was sent to an electronic mail address maintained by the persons on whom the document is served as last given by those persons. I personally requested a "delivery receipt" for this electronic mail message, and, unless disallowed by the recipient, received the same.

I DECLARE under penalty of perjury that the foregoing is true and correct.

Executed on January 22, 2021, at Los Angeles, California.



Cielo Guilatco