

Assigned for all purposes to: Stanley Mosk Courthouse, Judicial Officer: Stephanie Bowick

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Attorney for Plaintiff,
ISOM DUANE DAY

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

ISOM DUANE DAY, an individual,

Plaintiff,

vs.

HILLSIDES, a 501(c) not-for-profit
organization, and individual, and DOES 1-100,
inclusive,

Defendants.

Case No.: 22STCV03095

**PLAINTIFF ISOM DUANE DAY'S
COMPLAINT FOR DAMAGES AND
OTHER RELIEF**

JURY TRIAL DEMANDED

COMES NOW Plaintiff ISOM DUANE DAY ("Plaintiff") through his counsel of record, Koul Law Firm, and files this Complaint seeking damages and other relief for violations of California law, and as grounds for his action, Plaintiff alleges as follows:

INTRODUCTION

1. This is an action brought by the Plaintiff, ISOM DUANE DAY, (hereinafter referred to as "Plaintiff") pursuant to California statutory, decisional, and regulatory laws. Plaintiff was an employee of Defendant, HILLSIDES, (hereinafter referred to as "Defendant" or "HILLSIDES"), a not-for-profit organization, operating and doing business within the state of

1 California. Plaintiff brings this Complaint against Defendant HILLSIDES, , and DOES 1
2 through 100.

3 2. Plaintiff alleges that California statutory, decisional and regulatory laws prohibit
4 the conduct by Defendant herein alleged, and therefore Plaintiff has an entitlement to monetary
5 relief on the basis that Defendant violated such statutes, decisional law, and regulations.

6 **JURISDICTION AND VENUE**

7 3. This Court has subject matter jurisdiction over this action, and this Court has
8 personal jurisdiction over the Defendant by virtue of Defendant transacting, doing, soliciting
9 business in the county of Los Angeles, state of California, at least one Defendant resides in this
10 county, and because the conduct of all Defendant that harmed Plaintiff occurred within this
11 county.

12 4. Venue is proper in this judicial district because Defendant HILLSIDES operates
13 and conducts business in this county, Defendant HILLSIDES has legal obligations to Plaintiff in
14 this case that arose in this county, and because the Defendant's conduct that harmed Plaintiff
15 occurred within this county.

16 **PARTIES**

17 5. Plaintiff is and, at all relevant times herein mentioned, was residing in the county
18 of Los Angeles, state of California.

19 6. At all times herein mentioned, Plaintiff was an employee of Defendant
20 HILLSIDES.

21 7. Defendant HILLSIDES is a not-for-profit organization doing business in
22 California with the capacity to sue and be sued, and doing business, in the county of Los
23 Angeles, state of California with its principal place of business located at 940 Avenue 64,
24 Pasadena, CA 91105.

25 8. Plaintiff is unaware of the names and capacities of defendants sued herein as
26 DOES 1 through 100, inclusive, and therefore sues these defendants by such fictitious names.
27 When their true names and capacities are ascertained, Plaintiff will amend this Complaint by
28 inserting their true names and capacities. Plaintiff is informed and believes, and thereon alleges,

1 that each of the fictitiously named defendants is responsible in some manner for the occurrences
2 alleged and that these defendants proximately caused Plaintiff's damages.

3 9. Plaintiff is informed and believes, and thereon alleges, that at all times herein
4 mentioned, each of the defendants was the alter ego, joint venturer, co-employer, joint employer,
5 agent, and/or employee of each of the remaining defendants, and in doing the things hereinafter
6 alleged, were acting within the course and scope of such agency and employment. Defendant
7 HILLSIDES is vicariously liable and strictly liable for the acts and/or omissions of any owner,
8 supervisor or manager, which were committed within the course and scope of his or her
9 employment.

10 10. Plaintiff is informed and believes and thereon alleges that a defendant may have
11 committed other wrongful acts or omissions of which Plaintiff is presently unaware. Plaintiff
12 will seek leave of court to amend this Complaint when Plaintiff discovers these other acts and/or
13 omissions.

14 **EXHAUSTION OF ADMINISTRATIVE REMEDIES**

15 11. Prior to filing this Complaint, Plaintiff fulfilled any legal requirement or
16 exhausted any administrative remedy imposed on his by having filed a complaint with the
17 California Department of Fair Employment and Housing ("DFEH"), and on January 7, 2022
18 received a Right to Sue Letter from the DFEH. Plaintiff has therefore substantially complied
19 with all requirements for the filing of this Complaint and has exhausted his administrative
20 remedies prior to filing, commencing, and serving the within action. A copy of Plaintiff's FEHA
21 complaint to the Department along with the Department's response is attached hereto as Exhibit
22 "A."

23 **FACTUAL ALLEGATIONS**

24 12. Plaintiff commenced employment with Defendant HILLSIDES in or around
25 March 1997, and has since then held the positions of Therapeutic Behavior Specialists, Child
26 Care Provider, Program Director, and Program Assistant.

27 13. By the time of his termination, Plaintiff's was working as Campus Support for
28 Defendant and earning an hourly rate of \$26.00.

1 14. As Campus Support, Plaintiff reported to Alicia Jennings the School Director,
2 Amy C. the Director of Campus Programs, Lupe Gonzalez the Director of Campus, Christine
3 Gonzalez the Director of Campus Program, and Joe Casta the Chief Executive Officer.

4 15. As Campus Support, Plaintiff had a variety of responsibilities and duties,
5 including but not limited to maintaining the safety of the campus, separating physical altercations
6 between students, and providing administrative support to both teachers and childcare workers.

7 16. In or around November 2018, Plaintiff suffered life-altering injuries after
8 attempting to console a misbehaved student on campus. During the incident, the student punched
9 Plaintiff in the face, causing the Plaintiff to fall back and damage his teeth.

10 17. Due to the incident, Plaintiff was required to have a root canal as the punch
11 caused nerve damage to his teeth.

12 18. Shortly after the injury and over the next year, Plaintiff realized that he was not
13 the same person as before. Most notably, his injuries affected the way he performed his day-to-
14 day duties.

15 19. For example, prior to the injury, Plaintiff would be the first person to respond to
16 emergencies. Following his injury however, he was afraid of being the first responder and would
17 instead wait for others to respond. This was because Plaintiff was in constant fear of being
18 assaulted.

19 20. Throughout his course of employment with Defendant, including in January 2019,
20 Plaintiff had made numerous complaints and suggestions that Defendant hire more staff to assist
21 with the troubled students. In addition, he reported concerns he had with the organization and
22 management of the facility.

23 21. Based on what Plaintiff had witnessed during his time working for Defendant, he
24 felt as though there was a lack of supervision available to properly care for students and children.

25 22. Unfortunately, Plaintiff's concerns were always dismissed. Instead, in January
26 2019, Amy C. aloofly stated to Plaintiff that, "[the students] broke you."

27 23. In March 2020, Defendant's campus was shut down due to the COVID-19
28 pandemic, however some in-person assistance was needed. As such, Amy C. sent out an email

1 asking whether any staff or faculty would volunteer to work in-person. Plaintiff agreed to work
2 in-person from March 2020 through to June 2020.

3 24. At that time, it was agreed that Plaintiff would switch to working from home in
4 June 2020.

5 25. However, in or around September 2020, Plaintiff received a call from Human
6 Resources (“HR”) informing him that he needed to return to working in-person on campus.
7 Plaintiff explained that he had to work from home, since his daughter was still attending school
8 remotely.

9 26. Defendant refused to accommodate to Plaintiff’s needs and instead provided him
10 with a two-week leave of absence in order to facilitate his return to work.

11 27. Once Plaintiff returned to work, he noticed that the only employees forced to
12 work in-person—in his position specifically—were black and/or African American. All the non-
13 black employees were allowed to remain working from home. Nevertheless, Plaintiff continued
14 to work in a cordial manner.

15 28. Upon his return to work, in or around October 2020, Plaintiff had to assist with a
16 disabled, female teenager who would frequently run away from campus and return to Plaintiff
17 claiming she was sexually assaulted.

18 29. Over the next month, the teenager’s allegations and behavior started to affect
19 Plaintiff mentally. He began to feel as though he was unable to protect her all on his own.

20 30. As such, Plaintiff raised the issue of teens running off-site to do drugs, prostitute
21 and get sexually assaulted to Defendant’s Campus Supervisor, Robert DeSilva.

22 31. Plaintiff also specifically raised concerns of the disabled teen who was claiming
23 that she was raped by homeless men. However, DeSilva’s response to Plaintiff’s concern
24 regarding the teen was simply, “she’s seventeen.”

25 32. Plaintiff’s work along with Defendant’s inaction, began to take a major toll on his
26 mental and physical well-being. As such, in January 2021, Plaintiff filed a claim for Worker’s
27 Compensation.
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1 33. A few months later, in late March 2021, Plaintiff was caring for a child who was
2 vomiting blood. While caring for the child and witnessing all the blood, Plaintiff thought that the
3 child had died.

4 34. Over the next two weeks, Plaintiff could not get the thought and image of the
5 bloody vomit out of his head. As such, on or around April 9, 2021, Plaintiff visited Kaiser
6 Permanente's ("Kaiser") Emergency Department for medical treatment.

7 35. Given his symptoms, Plaintiff was referred to Kaiser's mental health department
8 and eventually diagnosed with Post-Traumatic Stress Disorder ("PTSD") and chronic mood
9 disorder with anxiety. In addition, Plaintiff was prescribed medication to help with his conditions
10 and was placed off from work for one week.

11 36. Plaintiff immediately notified Defendant of his medical conditions and medical
12 leave.

13 37. About one month later, on or around May 14, 2021, Plaintiff suffered an injury
14 while playing baseball at work. Upon receiving medical treatment, Plaintiff was placed on
15 restrictions, which included no lifting over fifteen (15) pounds.

16 38. That same day, Plaintiff notified Defendant of his restrictions. Defendant at that
17 time instructed Plaintiff to stay home because they were unable to accommodate Plaintiff's
18 restrictions.

19 39. Later that month, Plaintiff noticed that his pay was unexpectedly short. When
20 Plaintiff inquired about his pay, Defendant informed him to apply for unemployment.

21 40. The following month, in or around June 2021, Plaintiff received new work-place
22 restrictions, increasing his lift limit from 15 pounds to twenty (20) pounds. After having his
23 restrictions adjusted, Plaintiff was hopeful that Defendant would be able to accommodate him,
24 yet, they once again refused to do so.

25 41. At this point, Plaintiff decided to initiate an interactive process by contacting
26 Defendant and discussing his restrictions. To Plaintiff's surprise, Defendant refused to engage
27 until Plaintiff was able to return to work with no restrictions.
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1 42. As such, Plaintiff did not return to work until July 2021, when we was cleared to
2 return with no restrictions. However, prior to his return, Plaintiff met with Human Resources in
3 order to discuss his existing backpain along with his anxiety and PTSD.

4 43. During his meeting, Plaintiff requested to no longer have the responsibility of
5 responding to crises because of his severe PTSD. However, Plaintiff's request was denied,
6 reasoning that he needed a medical note modifying or restricting his duties.

7 44. Plaintiff then met with his psychiatrist who increased his medication dosage and
8 placed him on part-time duty for the next two weeks.

9 45. Upon receiving news of Plaintiff's part-time status, Defendant scheduled Plaintiff
10 to work at the High School where Plaintiff was assaulted back in November 2018 and suffered
11 PTSD as a result. Each day, Plaintiff would go into work completely terrified.

12 46. A few weeks later, on or around August 18, 2021, Plaintiff had to respond to a
13 call for two runaway students. Plaintiff found the two students nearby, at a homeless
14 encampment. Plaintiff immediately had an anxiety attack when he recognized one of the students
15 known to be violent.

16 47. Nevertheless, Plaintiff proceeded to ask the students to return to campus. The
17 student who was known to be violent, began to look for something to harm Plaintiff with. In a
18 state of panic, Plaintiff returned to campus and requested that someone else handle the matter.

19 48. Fearful of having to respond to similar situations in the future, and realizing that
20 Defendant was not going to take any steps to protect him, Plaintiff felt that he had no choice but
21 to resign from his position.

22 49. A few days later, on or around August 25, 2021, after Plaintiff had some time to
23 recuperate, Plaintiff sent a letter to Defendant explaining his constructive discharge.

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FIRST CAUSE OF ACTION

DISCRIMINATION ON THE BASIS OF DISABILITY

AND/OR MEDICAL CONDITION

Violation of FEHA, Gov. Code, § 12940(a)

(Against HILLSIDES, and DOES 1-100)

50. As a separate and distinct cause of action, Plaintiff complains and re-alleges all the allegations contained in this Complaint, and incorporates them by reference into this cause of action as though fully set forth herein, excepting those allegations which are inconsistent with this cause of action.

51. Under the FEHA, Government Code section 12940 et seq., it is an unlawful employment practice for an employer because of a person's disability and/or medical condition, to refuse to hire or employ the person, to refuse to select the person for a training program leading to employment, to bar or discharge the person from employment or from a training program leading to employment, or to discriminate against the person in compensation or in terms, conditions, or privileges of employment. It is unlawful, under the FEHA, Government Code section 12940, for an employer to fail to make reasonable accommodation for the known physical or mental disability of an employee. It is unlawful, under the FEHA, Government Code section 12940, for an employer to fail to engage in a timely, good faith, and interactive process with the employee to determine effective reasonable accommodations for an employee with a known physical or mental disability.

52. Defendant is a business entity regularly employing at least the minimum number of employees upon which certain legal duties and obligations arise under various laws and statutes, including the FEHA. At all times herein mentioned, Government Code §12940, et seq. was in full force and effect and was binding on Defendant and Defendant was subject to their terms. These sections require Defendant, as an employer, to refrain from discriminating against any employee on the basis of disability and/or medical condition.

53. Plaintiff, at all time herein mentioned, was an employee of Defendant HILLSIDES.

1 54. Plaintiff's protected status under the FEHA was his medical condition/disability.
2 During his employment, Plaintiff was diagnosed with psychological injuries such as PTSD, as
3 well as physical injuries as a result of work-related injuries and/or work-related incidents. As a
4 result of his injuries, Plaintiff was provided with workplace restrictions, prescribed medication,
5 and time off from work.

6 55. At all times relevant hereto, Defendant knew, perceived, and/or believed that
7 Plaintiff had the aforementioned protected status, described hereinabove.

8 56. As of commencement of his employment, and at all times herein mentioned,
9 Plaintiff was in all respects qualified for his position. Plaintiff had, at all times, performed his job
10 duties competently and diligently throughout his employment with Defendant.

11 57. Defendant made decisions adverse to Plaintiff in regards to compensation and
12 terms, conditions and privileges of employment when Defendant discriminated against, refused
13 to accommodate Plaintiff, and retaliated against Plaintiff by constructively discharging his
14 employment.

15 58. Plaintiff's disability and/or medical condition was a motivating factor in
16 Defendant's aforementioned decisions that were adverse to Plaintiff in regards to compensation
17 and terms, conditions and privileges of employment.

18 59. As a direct, legal, and proximate cause of Plaintiff's disability and/or medical
19 condition, Defendant harassed, discriminated, and retaliated against Plaintiff and took adverse
20 employment actions against him.

21 60. Similarly situated non-protected employees were treated more favorably than
22 Plaintiff.

23 61. Such employment practices are unlawful and discriminatory and in violation of
24 Government Code Section 12940 et seq., and have resulted in damages and injury to Plaintiff, as
25 alleged herein.

26 62. As a direct, legal, and proximate result of Defendant's discrimination against
27 Plaintiff on the basis of his disability and/or medical condition, Plaintiff has been harmed in that
28 Plaintiff has suffered a loss of past or future earnings, the intangible loss of such employment-

1 related opportunities, possible promotion within Defendant's limited partnership, and the
2 enhanced employee benefits and job security provided by Defendant. As a result of such
3 discrimination and consequent harm, Plaintiff has suffered damages in an amount according to
4 proof.

5 63. As a further proximate result of Defendant's unlawful and intentional
6 discriminatory actions against Plaintiff as alleged above, Plaintiff has been harmed in that
7 Plaintiff has suffered emotional pain, humiliation, mental anguish, loss of enjoyment of life, and
8 emotional distress. As a result of such discrimination and consequent harm, Plaintiff has suffered
9 such damages in an amount according to proof.

10 64. Defendant committed the discriminatory acts against Plaintiff herein alleged
11 maliciously, fraudulently and oppressively, with the wrongful intention of injuring Plaintiff.
12 Defendant acted with the improper and evil motive amounting to malice and in conscious
13 disregard of Plaintiff's right to be free from such illegal behavior, such as to constitute
14 oppression, fraud, or malice pursuant to California Civil Code section 3294 entitling Plaintiff to
15 punitive damages in an amount appropriate to punish and set an example of Defendant.

16 **SECOND CAUSE OF ACTION**

17 **FAILURE TO ACCOMMODATE DISABILITY**

18 **(FEHA, Cal.Gov.Code § 12940 et. seq.)**

19 **(Against HILLSIDES, and DOES 1-100)**

20 65. Plaintiff alleges and incorporates herein by this reference each and every
21 allegation set forth in all previous paragraphs of the Complaint.

22 66. Plaintiff at all times hereto was an "employee" within the meaning of California
23 Government Code §12926(c) and California Government Code §§12940 (a) and (c), which
24 prohibit disability/medical condition harassment/discrimination in employment.

25 67. Defendant was at all material times an "employer" within the meaning of
26 California Government Code §12926(d) and California Government Code §§12940(a) and (c),
27 and, as such, was barred from harassing/discriminating against Plaintiff on the basis of disability,
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1 perceived disability, or medical condition possessed or thought to be possessed by an employee,
2 as set forth in California Government Code §12940.

3 68. At the time of Plaintiff's employment with Defendant, he was suffering from a
4 medical condition that required Plaintiff to work with restrictions and/or accommodations.
5 Specifically, Plaintiff suffered an injury while performing his duties in Defendant's workspace.
6 Due to the severity of his injury, Plaintiff received both physical and psychological treatment.
7 Following the treatment, Plaintiff was provided with workplace restrictions which required
8 accommodation. Plaintiff had informed Defendant of his medical condition and need for
9 accommodation. Moreover, Plaintiff had submitted all the necessary paperwork for his
10 accommodation and regularly denied accommodation.

11 69. Despite having knowledge of Plaintiff's condition and his necessary
12 accommodations, Defendant intentionally, maliciously, wantonly, and refused to accommodate
13 Plaintiff's restrictions despite being able to do so.

14 70. As a proximate result of Defendant's failure to accommodate Plaintiff's known
15 health conditions, Plaintiff has suffered (a) humiliation, serious mental anguish, and emotional
16 and physical distress; and (b) employment benefits and opportunities; all on account of which
17 Plaintiff is entitled to compensatory damages. The amount and nature of such damages exceed
18 the jurisdictional limits of this court, but are presently unknown to Plaintiff, who will either seek
19 leave to amend this Complaint upon ascertaining such information or will prove the same at the
20 time of trial.

21 71. As more fully set forth above, Defendant's failure to accommodate Plaintiff's
22 known medical condition was committed intentionally, maliciously, wantonly, oppressively, and
23 fraudulently with a conscious disregard of Plaintiff's rights and with the intent to vex, injure,
24 punish, and annoy Plaintiff so as to cause the injuries sustained by Plaintiff. Such acts amounted
25 to oppression, fraud, and malice, as described in California Civil Code § 3294. Plaintiff is
26 therefore entitled to punitive or exemplary damages in an amount sufficient to punish and make
27 an example out of Defendant.
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1 72. Plaintiff has incurred and continues to incur legal expenses and attorney fees.
2 Plaintiff is presently unaware of the precise amount of these expenses and fees and prays leave of
3 court to amend this complaint when the amounts are more fully known.

4 WHEREFORE, Plaintiff requests relief as hereafter provided.

5 **THIRD CAUSE OF ACTION**

6 **FAILURE OF EMPLOYER TO ENGAGE IN GOOD FAITH**

7 **INTERACTIVE PROCESS TO DETERMINE EFFECTIVE**

8 **REASONABLE ACCOMMODATIONS**

9 **(Against AXS OPPORTUNITY FUND, LLC., and DOES 1-100)**

10 73. Plaintiff reincorporates by this reference as though full set forth herein,
11 paragraphs 1-72 above.

12 74. Government Code §12940 (n) requires an employer such as Defendant to engage
13 in timely, good faith, interactive process with the employee to determine effective reasonable
14 accommodations, if any, in response to a request for reasonable accommodations by an
15 employee with a known physical or mental disability or known mental condition.

16 75. Defendant and their employees and agents failed to participated in an interactive
17 process to reach a reasonable workplace accommodation for his medical disability regardless of
18 the fact that Plaintiff requested to have an interactive process and even attempted to initiate one.
19 Instead, Defendant refused to accommodate Plaintiff on at least two (2) separate occasions.
20 Plaintiff was instead required to stay at home and only return to work when he was fully cleared.

21 76. As a direct and legal result thereof, Plaintiff has been severely harmed by
22 Defendant as though fully set forth hereinabove.

23 WHEREFORE, Plaintiff requests relief as hereafter provided.

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1 **FOURTH CAUSE OF ACTION**

2 **DISCRIMINATION ON THE BASIS OF RACE AND/OR COLOR**

3 **Violation of FEHA, Gov. Code, § 12940, et seq.**

4 **(Against Defendant HILLSIDES and DOES 1-100)**

5 77. Plaintiff incorporates by reference and re-alleges paragraphs 1-76 above as though
6 fully set forth herein.

7 78. Government Code section 12940(a) provides that it is an unlawful employment
8 practice “[f]or an employer, because of the race, religious creed, color, national origin, ancestry,
9 physical disability, mental disability, medical condition, marital status, sex, or sexual orientation
10 of any person, to refuse to hire or employ the person or to refuse to select the person for a
11 training program leading to employment, or to bar or to discharge the person from employment
12 or from a training program leading to employment, or to discriminate against the person in
13 compensation or in terms, conditions, or privileges of employment.”

14 79. Defendant is a business entity regularly employing at least the minimum number
15 of employees upon which certain legal duties and obligations arise under various laws and
16 statutes, including the FEHA. At all times herein mentioned, Government Code §12940, et seq.
17 was in full force and effect and was binding on Defendant and Defendant was subject to their
18 terms. These sections require Defendant as an employer, to refrain from discriminating against
19 any employee on the basis of her race and/or color.

20 80. Plaintiff, at all times relevant hereto, was an employee of Defendant.

21 81. Plaintiff’s protected status under the FEHA is Plaintiff’s race and/or color.
22 Plaintiff, at all times herein mentioned, was a black and/or African American “employee” as
23 defined by Government Code §12926 et seq. and §12940 et seq.

24 82. As of commencement of his employment, and at all times herein mentioned,
25 Plaintiff was in all respects qualified for his position. Plaintiff had, at all times, performed his
26 job duties competently and diligently throughout her employment with Defendant.

27 83. Defendant made decisions adverse to Plaintiff in regards to terms, conditions, and
28 privileges of employment, including but not limited to, requiring that he and other black and/or

1 African-American employees return to work during the COVID-19 pandemic, while non-black
2 employees were permitted to work from home.

3 84. Plaintiff's race and/or color was a motivating factor in Defendant's
4 aforementioned decisions that were adverse to Plaintiff in regards to terms, conditions and
5 privileges of employment.

6 85. As a direct, legal, and proximate cause of Plaintiff's race and/or color, Defendant
7 discriminated and harassed, and took adverse employment actions against Plaintiff.

8 86. Similarly situated non-protected employees were treated more favorably than
9 Plaintiff.

10 87. Such employment practices are unlawful and discriminatory and in violation of
11 Government Code Section 12940 et seq., and have resulted in damages and injury to Plaintiff, as
12 alleged herein.

13 88. As a direct, legal, and proximate result of Defendant's discrimination against
14 Plaintiff on the basis of his race and/or color, Plaintiff has been harmed in that Plaintiff has
15 suffered a loss of past or future earnings, the intangible loss of such employment-related
16 opportunities as experience in the position from which Plaintiff was wrongfully terminated, and
17 the enhanced employee benefits and job security provided by Defendant. As a result of such
18 discrimination and consequent harm, Plaintiff has suffered damages in an amount according to
19 proof.

20 89. As a further proximate result of Defendant's unlawful and intentional
21 discriminatory actions against Plaintiff as alleged above, Plaintiff has been harmed in that
22 Plaintiff has suffered emotional pain, humiliation, mental anguish, loss of enjoyment of life, and
23 emotional distress. As a result of such discrimination and consequent harm, Plaintiff has
24 suffered such damages in an amount according to proof.

25 90. Defendant committed the discriminatory acts against Plaintiff herein alleged
26 maliciously, fraudulently and oppressively, with the wrongful intention of injuring Plaintiff.
27 Defendant acted with the improper and evil motive amounting to malice and in conscious
28 disregard of Plaintiff's right to be free from such illegal behavior, such as to constitute

1 oppression, fraud, or malice pursuant to California Civil Code section 3294 entitling Plaintiff to
2 punitive damages in an amount appropriate to punish and set an example of Defendant.

3 91. Plaintiff has incurred and continues to incur legal expenses and attorney's fees.
4 Plaintiff is presently unaware of the precise amount of these expenses and fees and prays leave of
5 court to amend this Complaint when the amounts are more fully known.

6 **FIFTH CAUSE OF ACTION**

7 **HARASSMENT**

8 **Violation of FEHA, Government Code Section 12940(j)**

9 **(Against Defendant HILLSIDES and DOES 1-100)**

10 92. As a separate and distinct cause of action, Plaintiff complains and re-alleges all
11 the allegations contained in this Complaint, and incorporates them by reference into this cause of
12 action as though fully set forth herein, excepting those allegations which are inconsistent with
13 this cause of action.

14 93. At all applicable times mentioned in this Complaint, Defendant regularly
15 employed persons in the state of California, bringing Defendant within the provisions of the
16 California Fair Employment and Housing Act which proscribe harassment. Defendant, and each
17 of them, and DOES 1-100 are separately and individually liable under FEHA for harassment.

18 94. Plaintiff was regularly harassed by Defendant's employees as prohibited under
19 FEHA. This constant, daily harassment was so despicable, severe and pervasive as to materially
20 alter Plaintiff's work environment. Plaintiff was harassed on the basis of his medical conditions
21 and need for accommodations.

22 95. Plaintiff suffered psychologically, emotionally, and physically from being the
23 victim of the harassment committed by Defendant's employees and also due to Defendant's
24 failure to prevent such harassment from occurring. Defendant's employees are liable for creating
25 a "hostile work environment" by subjecting Plaintiff to constant, severe, and pervasive
26 harassment and intentional torts. Defendant is liable to Plaintiff for the conduct of their
27 employees, managers, supervisors, and owners towards Plaintiff.
28

1 96. As a direct and legal result of Defendant's willful, knowing, and intentional
2 violation(s) of FEHA, Plaintiff has sustained and continues to sustain substantial losses in
3 earnings and other employment benefits.

4 97. As a further proximate result of Defendant's willful, knowing, and intentional
5 violation(s) of FEHA, Plaintiff has suffered and continues to suffer humiliation, emotional
6 distress, and mental and physical pain and anguish, all to his damage in a sum according to
7 proof.

8 98. Defendant committed the aforementioned acts against Plaintiff herein alleged
9 maliciously, fraudulently and oppressively, with the wrongful intention of injuring Plaintiff.
10 Defendant acted with the improper and evil motive amounting to malice and in conscious
11 disregard of Plaintiff's right to be free from such illegal behavior, such as to constitute
12 oppression, fraud, or malice pursuant to California Civil Code section 3294 entitling Plaintiff to
13 punitive damages in an amount appropriate to punish and set an example of each Defendant
14 named herein.

15 99. Plaintiff has incurred and continues to incur legal expenses and attorney's fees.
16 Plaintiff is presently unaware of the precise amount of these expenses and fees and prays leave of
17 court to amend this Complaint when the amounts are more fully known.

18 **SIXTH CAUSE OF ACTION**

19 **FAILURE TO TAKE ALL STEPS NECESSARY TO STOP**
20 **DISCRIMINATION AND HARASSMENT FROM OCCURRING**

21 **Violation of FEHA, Government Code Section 12940 et seq.**

22 **(Against Defendant HILLSIDES and DOES 1-100)**

23 100. As a separate and distinct cause of action, Plaintiff complains and re-alleges all
24 the allegations contained in this Complaint, and incorporates them by reference into this cause of
25 action as though fully set forth herein, excepting those allegations which are inconsistent with
26 this cause of action. Plaintiff brings this cause of action individually against Defendant
27 HILLSIDES.
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101. At all applicable times mentioned in this complaint, Defendant regularly employed five (5) or more persons bringing Defendant within the provisions of the California Fair Employment and Housing Act (FEHA).

102. Plaintiff has adequately exhausted all of his administrative remedies under FEHA and obtained a “Right to Sue” letter from the Department of Fair Employment and Housing against Defendant.

103. Defendant failed to take all reasonable steps necessary to prevent the
aforementioned discrimination and harassment of Plaintiff from occurring in violation of
Government Code §12940(k).

104. As a proximate result of Defendant's willful, knowing, and intentional violation(s) of FEHA, Plaintiff has sustained and continues to sustain substantial losses in earnings and other employment benefits.

105. As a proximate result of Defendant's willful, knowing, and intentional violation(s) of FEHA, Plaintiff has suffered and continues to suffer humiliation, emotional distress, and mental and physical pain and anguish, all to his damage in a sum according to proof.

106. Plaintiff has incurred and continues to incur legal expenses and attorney fees. Plaintiff is presently unaware of the precise amount of these expenses and fees and prays leave of court to amend this complaint when the amounts are more fully known.

WHEREFORE, Plaintiff request relief as hereafter provided.

SEVENTH CAUSE OF ACTION

RETALIATION

in Violation of Public Policy and FEHA

(Against Defendant HILLSIDES and DOES 1-100)

107. Plaintiff incorporates by reference and re-alleges paragraphs 1-106 above, as though fully set forth herein

108. Plaintiff engaged in a protected activity when he provided Defendant with workplace restrictions after suffering work-related injuries in addition to filing a Worker's

1 Compensation claim and reporting the concerns he had with the safety and supervision of
2 Defendant's students. Defendant retaliated against Plaintiff when Defendant refused to
3 accommodate Plaintiff, then after discussing his PTSD intentionally scheduled Plaintiff to return
4 to the High School he was assaulted at that caused his PTSD, and ultimately constructively
5 discharging him from his employment.

6 109. Said retaliation was in violation of public policy.

7 110. As a direct and legal result of Defendant's discrimination and retaliatory actions
8 against Plaintiff for his protected activities herein referenced, Plaintiff has suffered and continues
9 to suffer general and special damages, in an amount according to proof.

10 **EIGHTH CAUSE OF ACTION**

11 **WHISTLE BLOWER RETALIATION**

12 **IN VIOLATION OF CALIFORNIA LABOR CODE § 1102.5**

13 **(AGAINST DEFENDANT HILLSIDES, and DOES 1-100)**

14 111. As a separate and distinct cause of action, Plaintiff complains and re-alleges
15 paragraphs 1 through 110, and incorporates them by reference into this cause of action as though
16 fully set forth herein, excepting those allegations which are inconsistent with this cause of action.

17 112. "An employer, or any person acting on behalf of the employer, shall not retaliate
18 against an employee for disclosing information, or because the employer believes that the
19 employee disclosed or may disclose information, to a government or law enforcement agency, to
20 a person with authority over the employee or another employee who has the authority to
21 investigate, discover, or correct the violation or noncompliance, or for providing information to,
22 or testifying before, any public body conducting an investigation, hearing, or inquiry, if the
23 employee has reasonable cause to believe that the information discloses a violation of state or
24 federal statute, or a violation of or noncompliance with a local, state, or federal rule or
25 regulation, regardless of whether disclosing the information is part of the employee's job duties."
26 (Lab. Code, § 1102.5(b))
27
28

1 113. "In addition to other penalties, an employer that is a corporation or limited
2 liability company is liable for a civil penalty not exceeding ten thousand dollars (\$10,000) for
3 each violation of this section." (Lab. Code, § 1102.5(f))

4 114. Defendant retaliated against Plaintiff because Plaintiff complained and reported
5 the safety concerns he had about the students including the possible rape of a disabled minor.

6 115. By virtue of the foregoing, Defendant retaliated against Plaintiff after he
7 complained and reported the unlawful conduct by refusing to accommodate him after suffering
8 work-related injuries, refusing to work with him and the PTSD he got as a result of work, and
9 ultimately constructively discharging him from his employment in violation of Labor Code
10 section 1102.5.

11 116. As a result of the actions of Defendant, Plaintiff has been injured and has suffered
12 damages as follows: he has lost compensation and other employment-related benefits to which
13 he has been entitled and will lose such compensation and benefits in the future; he has suffered
14 from emotional distress, embarrassment and humiliation, and has suffered damage to his
15 professional reputation and standing.

16 **NINTH CAUSE OF ACTION**

17 **CONSTRUCTIVE DISCHARGE/WRONGFUL TERMINATION**

18 **In Violation of Public Policy**

19 **(Against Defendant HILLSIDES and DOES 1-100)**

20 117. As a separate and distinct cause of action, Plaintiff complains and re-alleges all
21 the allegations contained in this Complaint and incorporates them by reference into this cause of
22 action as though fully set forth herein, excepting those allegations which are inconsistent with
23 this cause of action. Plaintiff brings this cause of action individually against Defendant.

24 118. "[W]hen an employer's discharge of an employee violates fundamental principles
25 of public policy, the discharged employee may maintain a tort action and recover damages
26 traditionally available in such actions." (*Tameny v. Atlantic Richfield Co.* (1980) 27 Cal.3d 167,
27 170 [164 Cal.Rptr. 839, 610 P.2d 1330].)

1 119. Plaintiff believes and hereon alleges that Defendant forced him to resign his
2 position for reasons that violate public policy.

3 120. Plaintiff was employed by Defendant.

4 121. Plaintiff was subjected to working conditions that violated public policy, in that
5 Defendant retaliated against Plaintiff on the basis of his medical conditions, need for
6 accommodations and complaints/reports of campus and student safety. After taking no steps to
7 protect Plaintiff and accommodate to his medical conditions, Plaintiff had no choice but to resign
8 from his position.

9 122. Defendant intentionally created or knowingly permitted these working conditions
10 that violated public policy.

11 123. Plaintiff's working conditions were so intolerable and unusually and repeatedly
12 offensive that a reasonable person in Plaintiff's position would have no reasonable alternative
13 except to resign.

14 124. Plaintiff resigned on or around August 25, 2021 because of the aforementioned
15 intolerable working conditions.

16 125. As a result, Plaintiff has suffered and continues to suffer general and special
17 damages, in an amount according to proof. Plaintiff has suffered and continues to suffer
18 humiliation, emotional distress, and mental and physical pain and anguish, all to his damages in a
19 sum according to proof.

20 126. Plaintiff's intolerable working conditions were a substantial factor in causing
21 Plaintiff's harm and damages.

22 127. Plaintiff's constructive discharge was a direct and proximate result of the
23 Defendant's retaliatory conduct.

24 128. Said constructive discharge was wrongful and justifies the imposition of punitive
25 damages since it was against public policy. Defendant intentionally retaliated against Plaintiff
26 on account of Plaintiff's aforementioned complaints. In doing so, Defendant acted maliciously,
27 fraudulently, and oppressively, with the wrongful intention of injuring Plaintiff.
28

disregard of Plaintiff's rights. Plaintiff is therefore entitled to recover punitive damages against Defendant, and each of them.

WHEREFORE, Plaintiff requests relief as hereafter provided.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff further prays that this Court:

1. For back pay, with prejudgment interest, to the date of judgment herein;
2. For front pay, for the period from the date of judgment to the date at which Plaintiff actually reaches a position with earnings equivalent to those which he would have received from Defendant had he continued to work for Defendant and been compensated by Defendant as required;
3. For award of compensatory, consequential, and special damages in amount according to proof at trial;
4. For statutory penalties;
5. For an award of exemplary damages for the purpose of punishing Defendant and deterring its unlawful conduct in the future;
6. For interest on all sums awarded;
7. For reimbursement of the costs, including attorney's fees, as afforded under applicable law, including pursuant to Government Code sections 12965, 8547.10 and other applicable laws, including but not limited to Code Civ. Proc., §§ 998, 1021.1 and 1021.5, and for a contingency fee enhancement beyond the lodestar in accordance with *Ketchum v. Moses*, 24 Cal. 4th 1122, 104 Cal. Rptr. 2d 377, 17 P.3d 735 (2001), and related authorities; and
8. For unpaid wages, according to proof, together with interest thereon;
9. For an accounting, under administration of Plaintiff and subject to Court review;
10. A declaration of the rights and interests of the parties;
11. For restitution and disgorgement of ill-gotten profits; and

///

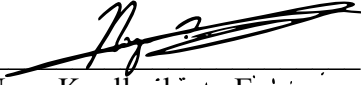
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12. For such further relief as is appropriate in the interest of justice.

DATED: January 25, 2022

KOUL LAW FIRM


By: Nazo Koulloukian, Esq.
Christine Harmandayan, Esq.
KOUL LAW FIRM
Attorneys for Plaintiff,
ISOM DUANE DAY

DEMAND FOR JURY TRIAL

Plaintiff demands trial by jury of all issues so triable.

DATED: January 25, 2022

KOUL LAW FIRM


By: Nazo Koulloukian, Esq.
Christine Harmandayan, Esq.
KOUL LAW FIRM
Attorneys for Plaintiff,
ISOM DUANE DAY

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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

January 7, 2022

NAZO L KOULLOUKIAN
3435 Wilshire Blvd, Ste. 1710
Los Angeles, California 90010

RE: **Notice to Complainant's Attorney**
DFEH Matter Number: 202201-15807707
Right to Sue: DAY / HILLSIDES

Dear NAZO L KOULLOUKIAN:

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

2218 Kausen Drive, Suite 100 | Elk Grove | CA | 95758
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January 7, 2022

RE: **Notice of Filing of Discrimination Complaint**
DFEH Matter Number: 202201-15807707
Right to Sue: DAY / HILLSIDES

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. A copy of the Notice of Case Closure and Right to Sue is enclosed for your records.

This matter may qualify for DFEH's Small Employer Family Leave Mediation Pilot Program. Under this program, established under Government Code section 12945.21, a small employer with 5 -19 employees, charged with violation of the California Family Rights Act, Government Code section 12945.2, has the right to participate in DFEH's free mediation program. Under this program both the employee requesting an immediate right to sue and the employer charged with the violation may request that all parties participate in DFEH's free mediation program. The employee is required to contact the Department's Dispute Resolution Division prior to filing a civil action and must also indicate whether they are requesting mediation. The employee is prohibited from filing a civil action unless the Department does not initiate mediation within the time period specified in section 12945.21, subdivision (b) (4), or until the mediation is complete or is unsuccessful. The employee's statute of limitations to file a civil action, including for all related claims not arising under section 12945.2, is tolled from the date the employee contacts the Department regarding the intent to pursue legal action until the mediation is complete or is unsuccessful. You may contact DFEH's Small Employer Family Leave Mediation Pilot Program by emailing DRDOnlineRequests@dfeh.ca.gov and include the DFEH matter number indicated on the Right to Sue notice.

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 & HOUSING

KEVIN KISH, DIRECTOR

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Department of Fair Employment and Housing



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January 7, 2022

ISOM DAY

3435 Wilshire Blvd., Ste. 1710
Los Angeles, CA 90010

RE: **Notice of Case Closure and Right to Sue**
DFEH Matter Number: 202201-15807707
Right to Sue: DAY / HILLSIDES

Dear ISOM DAY:

This letter informs you that the above-referenced complaint filed with the Department of Fair Employment and Housing (DFEH) has been closed effective January 7, 2022 because an immediate Right to Sue notice was requested.

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.

This matter may qualify for DFEH's Small Employer Family Leave Mediation Pilot Program. Under this program, established under Government Code section 12945.21, a small employer with 5 -19 employees, charged with violation of the California Family Rights Act, Government Code section 12945.2, has the right to participate in DFEH's free mediation program. Under this program both the employee requesting an immediate right to sue and the employer charged with the violation may request that all parties participate in DFEH's free mediation program. The employee is required to contact the Department's Dispute Resolution Division prior to filing a civil action and must also indicate whether they are requesting mediation. The employee is prohibited from filing a civil action unless the Department does not initiate mediation within the time period specified in section 12945.21, subdivision (b) (4), or until the mediation is complete or is unsuccessful. The employee's statute of limitations to file a civil action, including for all related claims not arising under section 12945.2, is tolled from the date the employee contacts the Department regarding the intent to pursue legal action until the mediation is complete or is unsuccessful. Contact DFEH's Small Employer Family Leave Mediation Pilot Program by emailing DRDOnlineRequests@dfeh.ca.gov and include the DFEH matter number indicated on the Right to Sue notice.



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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
ISOM DAY

DFEH No. 202201-15807707

Complainant,
vs.

HILLSIDES
940 AVENUE 64
PASADENA, CA 91105

Respondents

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

2. Complainant **ISOM DAY**, resides in the City of **Los Angeles**, State of **CA**.

3. Complainant alleges that on or about **August 18, 2021**, respondent took the following adverse actions:

Complainant was harassed because of complainant's race, color, disability (physical or mental), medical condition (cancer or genetic characteristic), other.

Complainant was discriminated against because of complainant's race, color, disability (physical or mental), medical condition (cancer or genetic characteristic), other and as a result of the discrimination was forced to quit, asked impermissible non-job-related questions, denied any employment benefit or privilege, denied reasonable accommodation for a disability, other, denied work opportunities or assignments.

Complainant experienced retaliation because complainant reported or resisted any form of discrimination or harassment, requested or used a disability-related accommodation and as a result was forced to quit, asked impermissible non-job-related questions, denied any

1 employment benefit or privilege, denied reasonable accommodation for a disability, other,
2 denied work opportunities or assignments.

3 **Additional Complaint Details:** Plaintiff was harassed, discriminated and retaliated against
4 and thereafter forced to quit his employment.

1 VERIFICATION

2 I, **Nazo L. Koulloukian**, am the **Attorney** in the above-entitled complaint. I have read
3 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 January 7, 2022, 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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