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IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF LOS ANGELES

DEPARTMENT OF FAIR EMPLOYMENT
AND HOUSING, an agency of the State of
California,

Plaintiff,

vs.

CALIFORNIA DEPARTMENT OF
CORRECTIONS AND REHABILITATION, an
agency of the State of California; and DOES
ONE through ONE HUNDRED, inclusive,

Defendants.

Case No.: 20STCV46485

**(Related Case Nos. 19STCV09935 and
20STCV10154)**

**FIRST AMENDED CIVIL RIGHTS
COMPLAINT FOR COMPENSATORY
AND DAMAGES, DECLARATORY
JUDGEMENT, AND INJUNCTIVE
RELIEF BECAUSE OF DISABILITY
BASED ON PREGNANCY, DISABILITY,
AND/OR SEX, AND RETALIATION**

JURY TRIAL DEMANDED

1 Plaintiff, Department of Fair Employment and Housing (“DFEH”), brings this civil rights
2 enforcement action in its own capacity, and on behalf of real parties in interest Mai Le, Damia Howard,
3 Tammy Dillard-Moijueh, and Kimberly Kaestner (“real parties in interest”), and all other similar
4 individuals (collectively, “aggrieved persons”), against California Department of Corrections and
5 Rehabilitation (“CDCR”) and Does One through One Hundred (collectively, “defendants”) to redress
6 pregnancy discrimination in employment:

7 **INTRODUCTION**

8 1. The DFEH brings this civil action to enforce the public policy of the State of California
9 ensuring all individuals a workplace free of discrimination, and to implement its statutory mandate to
10 remedy, prevent and deter workplace discrimination across the state. Beginning in 2018, real parties in
11 interest, Mai Le, Damia Howard, Tammy Dillard-Moijueh, and Kimberly Kaestner filed discrimination
12 complaints with DFEH seeking redress from CDCR’s unlawful discrimination, harassment, and
13 retaliation because of their sex, disability, and pregnancy. Specifically, CDCR engaged in unlawful
14 discrimination against the real parties in interest and other female employees of child-bearing age
15 because of their sex, disability, and pregnancy, by refusing to engage in the interactive process or
16 provide them with reasonable accommodation for their disability due to pregnancy. In doing so,
17 defendants also discriminated against real parties in interest and other women because of their sex and
18 retaliated against them for asserting their right to accommodation.

19 **PARTIES**

20 2. Plaintiff DFEH is the state civil rights department charged with prosecutorial authority to
21 investigate, mediate, and litigate civil rights enforcement actions. (Gov. Code, § 12930 et seq.) The
22 DFEH enforces the Fair Employment and Housing Act (“FEHA”), Government Code section 12900 et
23 seq., and may file civil complaints on behalf of itself and persons aggrieved by disability and pregnancy
24 discrimination and retaliation, among other claims, in state and federal courts.

25 3. At all times relevant to this complaint, Mai Le (“Le”) was and is an “employee” of
26 CDCR within the meaning of the applicable statutes. (Gov. Code, §§ 12926, 12940, 12945.)

27 4. At all times relevant to this complaint, Damia Howard (“Howard”) was and is an
28 “employee” of CDCR within the meaning of the applicable statutes. (Gov. Code, §§ 12926, 12940,

1 12945.)

2 5. At all times relevant to this complaint, Tammy Dillard-Moijueh (“Dillard-Moijueh”) was
3 and is an “employee” of CDCR within the meaning of the applicable statutes. (Gov. Code, §§ 12926,
4 12940, 12945.)

5 6. At all times relevant to this complaint, Kimberly Kaestner (“Kaestner”) was and is an
6 “employee” of CDCR within the meaning of the applicable statutes. (Gov. Code, §§ 12926, 12940,
7 12945.)

8 7. Defendant CDCR is now and was, at all times relevant to this complaint, an “employer”
9 within the meaning of Government Code section 12926, subdivision (d), 12940, 12945, and all other
10 applicable statutes.

11 8. The true names of Does One through One Hundred are unknown to the DFEH at this
12 time. The DFEH sues these defendants by fictitious names pursuant to California Code of Civil
13 Procedure section 474. The DFEH will amend this complaint to allege their true names and capacities
14 when ascertained. Each of the Doe defendants is legally responsible for the injuries and damages alleged
15 in this complaint.

16 9. The DFEH is informed, believes, and alleges that, at all times mentioned, each and every
17 defendant is and was, in doing the things complained of, the agent of their co-defendants and was acting
18 within the scope and authority of such agency, and that each and every defendant is jointly and severally
19 responsible and liable to the real party for the damages alleged.

20 10. The DFEH charges defendants, and each of them, with unlawful discrimination against
21 the real parties in interest and other aggrieved persons on the basis of their sex and disability, for failing
22 to engage in the good faith interactive process, for failing to provide reasonable accommodation to real
23 parties in interest and other aggrieved persons that would allow them to perform the essential functions
24 of their jobs, for failing to provide them with reasonable accommodations for disability due to their
25 pregnancy, and for retaliating against them for asserting their rights to reasonable accommodation in
26 violation of Government Code sections 12940 and 12945.

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28 ///

PROCEDURAL HISTORY, JURISDICTION, AND VENUE

11. The DFEH incorporates and realleges all previous allegations as if fully set forth therein.

12. The DFEH files this action pursuant to its authority under Government Code sections 12965.

13. The employment practices alleged to be unlawful were committed and have not been effectively remedied and “eliminated” within the meaning of Government Code Section 12900 et seq. , throughout the State of California. (Gov. Code § 12920, 12920.5, 12965, subd. (a).) Code of Civil Procedure section 401, subdivision (1), provides “[w]henever it is provided by any law of this State that an action or proceeding against the State or a department, institution, board, commission, bureau, officer or other agency thereof shall or may be commenced in, tried in, or removed to the County of Sacramento, the same may be commenced and tried in any city or city and county of this State in which the Attorney General has an office.” The Attorney General maintains an office in the City of Los Angeles. Therefore, venue is proper in this Court.

14. In addition, this case is related to *Carreon, et al. v. California Department of Corrections and Rehabilitation*, 19STCV09935 (Los Angeles County), which was filed March 25, 2019, and *Bagube, et al. v. California Department of Corrections and Rehabilitation*, 20STCV10154 (Los Angeles County), which was filed March 13, 2020.

15. On or about November 7, 2018, Dillard-Mojjueh filed a complaint of discrimination with the DFEH. The DFEH properly served the administrative complaint on CDCR.

16. On or about November 14, 2018, Kaestner filed a complaint of discrimination with the DFEH. The DFEH properly served the administrative complaint on CDCR.

17. On or about July 23, 2019, Le filed a complaint of discrimination with the DFEH. The DFEH properly served the administrative complaint on CDCR.

18. On or about October 15, 2019, Howard filed a complaint of discrimination with the DFEH. The DFEH properly served the administrative complaint on CDCR.

19. On or around September 18, 2019, the DFEH filed and served defendants with a Notice of Group or Class Complaint and Investigation pursuant to Government Code sections 12940, 12960, 12961, and 12965, subdivision (a), which timely notified defendants that DFEH would treat Dillard-

1 Moijueh's complaint "as a group or class complaint for purposes of investigation, conciliation,
2 mediation, or civil action, and that group or class relief will be sought as appropriate. The complaint has
3 been brought by complainant on her/his own behalf as an aggrieved person and as representative of a
4 group or class under Government Code section 12961." On or around October 18, 2019, the DFEH filed
5 and served defendants with an Amended Notice of Group or Class Complaint and Investigation.

6 20. On or around September 18, 2019, the DFEH filed and served defendants with a Notice
7 of Group or Class Complaint and Investigation pursuant to Government Code sections 12940, 12960,
8 12961, and 12965, subdivision (a), which timely notified defendants that DFEH would treat Kaestner's
9 complaint "as a group or class complaint for purposes of investigation, conciliation, mediation, or civil
10 action, and that group or class relief will be sought as appropriate. The complaint has been brought by
11 complainant on her own behalf as an aggrieved person and as representative of a group or class under
12 Government Code section 12961." On or around October 18, 2019, the DFEH filed and served
13 defendants with an Amended Notice of Group or Class Complaint and Investigation.

14 21. The DFEH attempted to resolve this matter without litigation as required by Government
15 Code section 12965 by participating in a mediation with defendants on October 8, 2020. That mediation
16 was not successful.

17 22. All conditions precedent to the institution of this lawsuit have been fulfilled.

18 23. Tolling agreements extended DFEH's deadlines to file a civil complaint on each real
19 party in interest's administrative complaint, such that this civil complaint is timely.

20 24. The DFEH is not subject to class certification requirements.

21 25. The amount of damages sought by this complaint exceeds the minimum jurisdictional
22 limits of this Court.

23 **FACTUAL ALLEGATIONS**

24 26. The DFEH incorporates and realleges all previous allegations as if fully set forth therein.

25 27. From 1992 to 2015, defendant California Department of Corrections and Rehabilitation
26 ("CDCR") maintained a policy that allowed a pregnant employee to transfer to a less strenuous or
27 hazardous position as a reasonable accommodation. The policy stated "[t]he State Personnel Board
28 (SPB) requires [CDCR] to provide reasonable accommodation to a pregnant employee when needed,

1 enabling her to continue to work as long as she is physically able to do so.” The policy described various
2 potential accommodations, including temporary reassignment, special assignments, or temporary/light
3 duty not to exceed 120 days.

4 28. In 2012, CDCR entered a judicially supervised settlement of a non-pregnancy disability
5 discrimination case (hereinafter “the Knott Settlement”) and agreed to develop a “temporary disability
6 accommodations policy.” CDCR did not develop a “temporary disability accommodation policy.”

7 29. Instead, on or about June 15, 2015, CDCR revised its Operations Manual. Under the
8 terms of revised Operations Manual, “when operational needs allow, [CDCR] provide[s] Limited Term
9 Light Duty Assignments (LTLDA) to all CDCR employees who have medical limitations in their ability
10 to perform the essential functions of their job The duration of a LTLDA for any one employee may
11 vary; but, in any case, it shall not extend beyond 60 calendar days in a 6-month period for any medical
12 condition(s).” Further, in order to obtain a LTLDA, an employee must submit medical documentation
13 stating an expectation that the employee will be able to return to work full duty, with or without a
14 reasonable accommodation, upon or before completion of the LTLDA.

15 30. Under this revised Operations Manual, CDCR allowed pregnant employees across the
16 department only one of the following options: (1) stay in their current position which would require
17 them to (a) waive any medical restrictions, (b) confirm their ability to perform each and every essential
18 job function, and (c) assume liability for any injury caused by their decision to ignore medical
19 restrictions; (2) accept a medical demotion or transfer which may result in reduced pay, loss of seniority,
20 loss of benefits, and loss of right to bid for shifts; (3) take a combination of paid or unpaid leave; or (4)
21 separate from state service. CDCR refers to this as the “list of options.”

22 31. At all times relevant to this complaint, Le was employed by defendants as a registered
23 nurse at California Health Care Facility located in Stockton, California. On or around April 5, 2019, Le
24 informed defendants that due to a serious health condition related to her pregnancy, she could only work
25 eight (8) hours a day. Defendants placed Le on a limited term light duty assignment for sixty (60) days
26 which ended on or around June 11, 2019. Le requested an extension of her light duty assignment but
27 defendants denied her request. Thereafter, she worked without accommodations and refused each
28 request to work overtime. Each refusal put her at risk for disciplinary action. Le’s choice to work

1 without accommodations put her emotional health and well-being at risk.

2 32. At all times relevant to this complaint, Howard was employed by defendants as a
3 corrections officer at California Health Care Facility located in Stockton, California. On or around July
4 14, 2019, Howard requested reasonable accommodation for pregnancy related work restrictions. On or
5 around July 16, 2019, defendants denied Howard's request for reasonable accommodation and instead,
6 presented her with the "list of options." Howard was placed on non-industrial disability leave, which
7 caused a substantial loss in income. The denial of accommodations caused Howard emotional distress.

8 33. At all times relevant to this complaint, Dillard-Mojjueh was employed by defendants as a
9 registered nurse at Folsom State Prison located in Folsom, California. On or around March 21, 2018,
10 Dillard-Mojjueh requested modified duties from March 21 through September 29, 2018 as a reasonable
11 accommodation due to pregnancy.

12 34. Defendants denied Dillard-Mojjueh's request because it exceeded the maximum of sixty
13 (60) days allowed for a limited term light duty assignment. On or around March 30, 2018, Dillard-
14 Mojjeuh requested modified duties as a reasonable accommodation for her pregnancy until May 14,
15 2018. On or around April 12, 2018, defendants denied Dillard-Mojjueh's request and instead provided
16 her with the "list of options." As a result, she exhausted all of her paid leave before delivering her twins
17 and had to return to work when they were only six weeks old.

18 35. At all times relevant to this complaint, Kaestner was employed by defendants as a
19 registered nurse at Richard J. Donovan State Prison located in San Diego, California. In late April 2018,
20 Kaestner informed defendants that due to a serious health condition related to her pregnancy, she could
21 only work eight (8) hours a day. Defendants placed Kaestner on a limited term light duty assignment for
22 sixty days (60) from approximately April 30 to June 28, 2018.

23 36. On or around June 13, 2018, nearing the end of her limited term light duty assignment,
24 Kaestner informed defendants that she was still able to perform all the essential functions of her job with
25 the restriction that she could not work more than eight (8) hours per day due to her pregnancy. Kaestner
26 requested that her light duty assignment (i.e., working only eight hours per day) be extended until the
27 birth of her child. On or around June 21, 2018, defendants denied Kaestner's request for a reasonable
28 accommodation and instead, presented her with the "list of options." Kaestner chose to work without

1 accommodations, placing her emotional well-being and health at risk.

2 37. The DFEH's investigation into these complaints demonstrated that CDCR's policy
3 intentionally and adversely impacted a broad spectrum of CDCR employees in multiple bargaining
4 units, from office technicians to licensed vocational nurses to psychiatrists. The discriminatory policy
5 was thus not confined to employees with peace officer status, and the class certified in *Carreon et al. v.*
6 *California Department of Corrections and Rehabilitation* does not seek relief for the full group of
7 aggrieved individuals.

8 38. In early 2020, CDCR promulgated emergency regulations that purportedly cured the
9 discriminatory intent and impact of this misguided policy. Those regulations are now permanent.
10 However, because regulations can be revised and overwritten, CDCR's voluntary cessation does not
11 moot DFEH's claims for injunctive relief. Nor does promulgation and adoption of a new written policy
12 effectively remedy and "eliminate" the discrimination or provide the full and complete relief to which
13 the public, DFEH and the victims of discrimination are entitled.

14 39. Moreover, for five years, the discriminatory written policy intentionally and adversely
15 impacted a broad group of CDCR employees who suffered a wide range of damages as a result,
16 including, but not limited to, economic loss and emotional distress. The DFEH seeks redress for the full
17 group of aggrieved individuals, from June 15, 2015 to the present.

18
19 **FIRST CAUSE OF ACTION**
20 **Discrimination on the Basis of Disability, Sex and Gender**
(Gov. Code, § 12940, subd. (a))

21 40. The DFEH incorporates and realleges all previous allegations as if fully set forth therein.

22 41. Government Code section 12940, subdivision (a), states that it is unlawful for an
23 employer to discriminate against any person because of, *inter alia*, that person's disability, sex or
24 gender.

25 42. Defendants refused and continue to refuse to provide real parties in interest and other
26 aggrieved persons equal opportunities for employment because of their disability due to pregnancy, sex
27 and gender. CDCR's restrictive 60 days or less limited term light duty policy does not treat all
28 employees equally. Given the duration of pregnancy, it effectively excludes pregnant people. As a result,

1 the policy imposes significant burdens on pregnant employees.

2 43. Defendants' discriminatory acts constitute unlawful discrimination against real parties in
3 interest and other aggrieved persons due to their disability, sex and gender in violation of Government
4 Code section 12940, subdivision (a).

5 44. As a result of defendants' unlawful employment practices, real parties in interest and
6 other aggrieved persons suffered and continue to suffer economic damages including, but not limited to,
7 loss of paid leave and loss of income in an amount to be determined at trial.

8 45. As a result of defendants' unlawful employment practices, real parties in interest and
9 other aggrieved persons suffered and continue to suffer emotional distress, including but not limited to,
10 emotional pain, humiliation, embarrassment, belittlement, sadness, and mental anguish, in an amount to
11 be determined at trial.

12 46. Defendants engaged in, and by their refusal to comply with the law, demonstrated they
13 will continue to engage in, the pattern or practice of unlawful employment practices and disparate
14 impact of the same described above unless they are enjoined pursuant to the police power granted by
15 Government Code sections 12920 and 12920.5, from failing or refusing to comply with the mandates of
16 the FEHA, Government Code section 12900 et seq.

17 47. Unless defendants are enjoined from failing or refusing to comply with the mandates of
18 the FEHA, real parties in interest and other persons' right to seek or hold employment free of unlawful
19 discrimination will continue to be violated.

20 48. Plaintiff DFEH lacks any plain, speedy, adequate remedy at law to prevent such
21 harm, injury, and loss, which is the subject of this complaint and will continue until this Court enjoins
22 the unlawful conduct and grants other affirmative relief as prayed for therein to the extent not released in
23 an individual case filed by DFEH against CDCR in San Luis Obispo County Superior Court.

24
25 **SECOND CAUSE OF ACTION**
26 **Discrimination – Failure to Provide Reasonable Accommodation**
(Gov. Code, § 12940, subd. (m))

27 49. The DFEH incorporates and realleges all previous allegations as if fully set forth therein.

28 50. Government Code section 12940, subdivision (m), states that it is unlawful for an

1 employer to fail to provide reasonable accommodation to a disabled employee that would allow the
2 employee to perform the essential functions of her job.

3 51. Defendants refused to provide real parties in interest with a reasonable accommodation
4 that would have allowed them to continue performing their jobs. Instead of transferring employees to a
5 less strenuous or hazardous position for the duration of the pregnancy, as it had done prior to 2015, or
6 offering pregnant employees a reasonable accommodation, CDCR offered them only the options of
7 medically demoting, exhausting leave before birth, or relinquishing their rights to accommodations.

8 52. Defendants' failure to provide real parties in interest and other aggrieved persons with a
9 reasonable accommodation constitutes a violation of Government Code section 12940, subdivision (m).

10 53. As a result of defendants' unlawful employment practices, real parties in interest and
11 other aggrieved persons suffered and continue to suffer economic damages including, but not limited to,
12 loss of paid leave and loss of income in an amount to be determined at trial.

13 54. As a result of defendants' unlawful employment practices, real parties in interest and
14 other aggrieved persons suffered and continue to suffer emotional distress, including but not limited to,
15 emotional pain, humiliation, embarrassment, belittlement, sadness, and mental anguish, in an amount to
16 be determined at trial.

17 55. Defendants engaged in, and by their refusal to comply with the law, demonstrated they
18 will continue to engage in, the pattern or practice of unlawful employment practices and disparate
19 impact of the same described above unless they are enjoined pursuant to the police power granted by
20 Government Code sections 12920 and 12920.5, from failing or refusing to comply with the mandates of
21 the FEHA, Government Code section 12900 et seq.

22 56. Unless defendants are enjoined from failing or refusing to comply with the mandates of
23 the FEHA, real parties in interest and other persons' right to seek or hold employment free of unlawful
24 discrimination will continue to be violated.

25 57. Plaintiff DFEH lacks any plain, speedy, adequate remedy at law to prevent such
26 harm, injury, and loss, which is the subject of this complaint and will continue until this Court enjoins
27 the unlawful conduct and grants other affirmative relief as prayed for therein to the extent not released in
28 an individual case filed by DFEH against CDCR in San Luis Obispo County Superior Court.

THIRD CAUSE OF ACTION
Failure to Engage in the Good Faith Interactive Process
(Gov. Code, § 12940, subd. (n))

58. The DFEH incorporates and realleges all previous allegations as if fully set forth therein.

59. Government Code section 12940, subdivision (n), requires an employer to engage in a timely, good faith interactive process in an attempt to identify reasonable accommodations for an employee's disability.

60. Defendants refused to engage real parties in interest and other aggrieved persons in a timely, good faith interactive process. For example, when Howard presented CDCR with medical restrictions and requested a reasonable accommodation for her pregnancy, CDCR immediately required her to go on leave. Dillard-Mojjueh's request for reasonable accommodation was denied. While Kaestner and Le were provided with 60 days LTLDA, they were not provided with any reasonable accommodation thereafter.

61. Defendants' failure to engage real parties in interest and other aggrieved persons in a timely, good faith interactive process constitutes a violation of Government Code section 12940, subdivision (n).

62. As a result of defendants' unlawful employment practices, real parties in interest and other aggrieved persons suffered and continue to suffer economic damages including, but not limited to, loss of paid leave and loss of income in an amount to be determined at trial.

63. As a result of defendants' unlawful employment practices, real parties in interest and other aggrieved persons suffered and continue to suffer emotional distress, including but not limited to, emotional pain, humiliation, embarrassment, belittlement, sadness, and mental anguish, in an amount to be determined at trial.

64. Defendants engaged in, and by their refusal to comply with the law, demonstrated they will continue to engage in, the pattern or practice of unlawful employment practices and disparate impact of the same described above unless they are enjoined pursuant to the police power granted by Government Code sections 12920 and 12920.5, from failing or refusing to comply with the mandates of the FEHA, Government Code section 12900 *et seq.*

65. Unless defendants are enjoined from failing or refusing to comply with the mandates of the FEHA, real parties in interest and other persons' right to seek or hold employment free of unlawful discrimination will continue to be violated.

66. Plaintiff DFEH lacks any plain, speedy, adequate remedy at law to prevent such harm, injury, and loss, which is the subject of this complaint and will continue until this Court enjoins the unlawful conduct and grants other affirmative relief as prayed for therein to the extent not released in an individual case filed by DFEH against CDCR in San Luis Obispo County Superior Court..

FOURTH CAUSE OF ACTION
Unlawful Retaliation
(Gov. Code, § 12940, subd. (h))

66. The DFEH incorporates and realleges all previous allegations as if fully set forth herein.

67. Government Code section 12940, subdivision (h), makes it unlawful to retaliate against a person for asserting her right under the FEHA.

68. After real parties in interest and other aggrieved persons requested reasonable accommodation, CDCR retaliated against them by forcing them to take a medical demotion or leave (in the case of Howard and other correctional officers) or forcing them to take leave.

69. Defendants' conduct towards Real parties in interest and other aggrieved persons constitutes a violation of Government Code section 12940, subdivision (h).

70. As a result of defendants' unlawful employment practices, real parties in interest and other aggrieved persons suffered and continue to suffer economic damages including, but not limited to, loss of paid leave and loss of income in an amount to be determined at trial.

71. As a result of defendants' unlawful employment practices, real parties in interest and other aggrieved persons suffered and continue to suffer emotional distress, including but not limited to, emotional pain, humiliation, embarrassment, belittlement, sadness, and mental anguish, in an amount to be determined at trial.

72. Defendants engaged in, and by their refusal to comply with the law, demonstrated they will continue to engage in, the pattern or practice of unlawful employment practices and disparate impact of the same described above unless they are enjoined pursuant to the police power granted by

Government Code sections 12920 and 12920.5, from failing or refusing to comply with the mandates of the FEHA, Government Code section 12900 et seq.

73. Unless defendants are enjoined from failing or refusing to comply with the mandates of the FEHA, real parties in interest and other persons' right to seek or hold employment free of unlawful discrimination will continue to be violated.

74. Plaintiff DFEH lacks any plain, speedy, adequate remedy at law to prevent such harm, injury, and loss, which is the subject of this complaint and will continue until this Court enjoins the unlawful conduct and grants other affirmative relief as prayed for therein.

FIFTH CAUSE OF ACTION
Denial of Pregnancy Disability Rights
(Gov. Code, § 12945, subd. (a))

75. The DFEH incorporates and realleges all previous allegations as if fully set forth herein.

76. Government Code section 12945, subdivision (b), requires an employer to provide an employee with reasonable accommodation for disability due to her pregnancy including, temporary reassignment to a less strenuous or hazardous post for the duration of her pregnancy if she so requests with the advice of her physician, where that transfer can be reasonably accommodated.

77. Defendants denied real parties in interest and other aggrieved persons of their pregnancy disability rights. CDCR denied Dillard-Mojueh and Howard's requests for light duty assignments, citing the temporal limitation on light duty assignments to 60 days and the requirement that the employees return to full duty immediately thereafter. Thus, because pregnancy and any related need for accommodation will generally last longer than 60 days, CDCR violated the express requirement that light duty assignments be available to both pregnant and non-pregnant employees with temporary disabilities.

78. Defendants' conduct towards real parties in interest and other aggrieved persons constitutes a violation of Government Code section 12945, subdivision (a).

79. As a result of defendants' unlawful employment practices, real parties in interest and other aggrieved persons suffered and continue to suffer economic damages including, but not limited to, loss of paid leave and loss of income in an amount to be determined at trial.

1 80. As a result of defendants' unlawful employment practices, real parties in interest and
2 other aggrieved persons suffered and continue to suffer emotional distress, including but not limited to,
3 emotional pain, humiliation, embarrassment, belittlement, sadness, and mental anguish, in an amount to
4 be determined at trial.

5 81. Defendants engaged in, and by their refusal to comply with the law, demonstrated they
6 will continue to engage in, the pattern or practice of unlawful employment practices and disparate
7 impact of the same described above unless they are enjoined pursuant to the police power granted by
8 Government Code sections 12920 and 12920.5, from failing or refusing to comply with the mandates of
9 the FEHA, Government Code section 12900 et seq.

10 82. Unless defendants are enjoined from failing or refusing to comply with the mandates of
11 the FEHA, real parties in interest and other persons' right to seek or hold employment free of unlawful
12 discrimination will continue to be violated.

13 83. Plaintiff DFEH lacks any plain, speedy, adequate remedy at law to prevent such harm,
14 injury, and loss, which is the subject of this complaint and will continue until this Court enjoins the
15 unlawful conduct and grants other affirmative relief as prayed for therein to the extent not released in an
16 individual case filed by DFEH against CDCR in San Luis Obispo County Superior Court.

17
18 **SIXTH CAUSE OF ACTION**
19 **Failure to Take All Reasonable Steps to Prevent Discrimination and Retaliation from Occurring**
 (Gov. Code, § 12940, subd. (k))

20 84. The DFEH incorporates and realleges all previous allegations as if fully set forth herein.

21 85. Government Code section 12940, subdivision (k), provides that it is an unlawful
22 employment practice for an employer to fail to take all reasonable steps to prevent discrimination.

23 86. Defendants are liable for failing to prevent discrimination by failing to develop and
24 implement accurate policies prohibiting discrimination under the FEHA, and failing to provide training
25 its employees, including without limitation, supervisors.

26 87. As a result of defendants' unlawful employment practices, real parties in interest and
27 other aggrieved persons suffered and continue to suffer economic damages including, but not limited to,
28 loss of paid leave and loss of income in an amount to be determined at trial.

1 88. As a result of defendants' unlawful employment practices, real parties in interest and
2 other aggrieved persons suffered and continue to suffer emotional distress, including but not limited to,
3 emotional pain, humiliation, embarrassment, belittlement, sadness, and mental anguish, in an amount to
4 be determined at trial.

5 89. Defendants engaged in, and by their refusal to comply with the law, demonstrated they
6 will continue to engage in, the pattern or practice of unlawful employment practices and disparate
7 impact of the same described above unless they are enjoined pursuant to the police power granted by
8 Government Code sections 12920 and 12920.5, from failing or refusing to comply with the mandates of
9 the FEHA, Government Code section 12900 et seq.

10 90. Unless defendants are enjoined from failing or refusing to comply with the mandates of
11 the FEHA, real parties in interest and other persons' right to seek or hold employment free of unlawful
12 discrimination will continue to be violated.

13 91. Plaintiff DFEH lacks any plain, speedy, adequate remedy at law to prevent such harm,
14 injury, and loss, which is the subject of this complaint and will continue until this Court enjoins the
15 unlawful conduct and grants other affirmative relief as prayed for therein to the extent not released in an
16 individual case filed by DFEH against CDCR in San Luis Obispo County Superior Court. .

17 92. Plaintiff DFEH also seeks monetary relief for defendants' failure to take all reasonable
18 steps to prevent discrimination and retaliation from occurring.

19
20 **SEVENTH CAUSE OF ACTION**

21 **Failure to Take All Reasonable Steps to Prevent Discrimination and Retaliation from Occurring**
22 **(Gov. Code, § 12940, subd. (k); Cal. Code Regs., tit. 2, § 11023, subd. (a)(3))**
23 **On behalf of the DFEH**

24 93. The DFEH incorporates and realleges all previous allegations as if fully set forth herein.

25 94. Government Code section 12940, subdivision (k), provides that it is an unlawful
26 employment practice for an employer to fail to take all reasonable steps to prevent discrimination.

27 95. In an exercise of the DFEH's police powers, the DFEH may independently seek
28 additional remedies for a violation of Cal. Gov't Code § 12940(k). (Cal. Code Regs., tit. 2, § 11023,
subd. (a)(3).) As the agency of the State of California charged with the administration, interpretation,

1 investigation, and enforcement of FEHA, the DFEH brings this claim in the name of the DFEH on
2 behalf of all of defendants' employees who suffered pregnancy, sex, and/or disability discrimination,
3 and retaliation for opposing the same.

4 96. As alleged above, defendants failed to take all reasonable steps necessary to prevent
5 discrimination and retaliation from occurring because defendants affirmatively developed a
6 discriminatory policy, even in the face of a judicially-supervised settlement agreement prohibiting the
7 same. Defendants have also failed to provide training its employees, including without limitation,
8 supervisors.

9 97. Defendants engaged in, and by their refusal to comply with the law, demonstrated they
10 will continue to engage in, the pattern or practice of unlawful employment practices and disparate
11 impact of the same described above unless they are enjoined pursuant to the police power granted by
12 Government Code sections 12920 and 12920.5, from failing or refusing to comply with the mandates of
13 the FEHA, Government Code section 12900 et seq.

14 98. Defendant engaged in, and by its refusal to comply with the law, demonstrated it will
15 continue to engage in, the unlawful employment discrimination described herein unless it is enjoined
16 pursuant to the FEHA. Unless defendants are enjoined from failing or refusing to comply with the
17 mandates of the FEHA, real parties in interest and other persons' right to seek or hold employment free
18 of unlawful discrimination will continue to be violated.

19 99. Plaintiff DFEH lacks any plain, speedy, adequate remedy at law to prevent such harm,
20 injury, and loss, which is the subject of this complaint and will continue until this Court enjoins the
21 unlawful conduct and grants other affirmative relief as prayed for therein to the extent not released in an
22 individual case filed by DFEH against CDCR in San Luis Obispo County Superior Court.

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JURY TRIAL DEMANDED

100. The DFEH demands trial of all issues by jury.

PRAYER FOR RELIEF

All Causes of Action

WHEREFORE, the DFEH prays that this Court issue judgment in favor of the DFEH and the real parties in interest, Mai Le, Damia Howard, Tammy Dillard-Moijueh, Kimberly Kaestner, and other aggrieved persons and order defendants to do the following:

1. A declaratory judgment that the practices complained of in this complaint are unlawful and violate the Fair Employment and Housing Act, Government Code section 12940, subdivisions (a) (m), (n), and/or (k) and Government Code section 12945, subdivision (a);

2. To cease and desist from discriminating against real parties in interest and other employees on the basis of disability, sex and gender, or any other protected basis;

3. To pay to real parties in interest and other aggrieved persons economic damages including, but not limited to, loss of paid leave and loss of income in an amount to be determined at trial plus annual interest as required by law;

4. To pay to real parties in interest and other aggrieved persons compensatory damages for their emotional distress, mental anguish, pain and suffering, and other emotional injury resulting from defendants' unlawful conduct, according to proof, with interest at the applicable legal rate;

5. To ensure that all managers, supervisors, human resources personnel, and rank and file employees are aware of CDCR's anti-discrimination policies and procedures including without limitation any newly adopted policies and CDCR's obligation to properly and timely evaluate, process, and decide requests for reasonable accommodations;

6. To appoint a third-party Monitor to ensure CDCR properly and timely evaluates, processes, and decides requests for reasonable accommodations;

7. To make quarterly reports regarding requests for reasonable accommodations to DFEH and the court appointed Monitor;

8. Injunctive relief according to proof to correct CDCR's unlawful policies or practices to

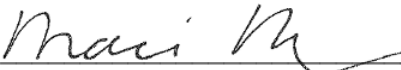
1 the extent not precluded by prior agreement between the parties;

2 9. Pay costs, including reasonable attorney fees, to the DFEH as provided by statute; and

3 10. For such other relief as the Court deems just and proper.

4 Dated: March 26, 2021

DEPARTMENT OF FAIR EMPLOYMENT
AND HOUSING

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7 MARI MAYEDA
8 Associate Chief Counsel
9 Attorney for the DFEH
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PROOF OF SERVICE

I, the undersigned, hereby declare:

I am over the age of eighteen (18) and not a party to the within action. My business and mailing address is 320 West 4th Street, Suite # 1000, Los Angeles, California 90013.

My e-mail address is valentina.martinez@dfeh.ca.gov.

On March 26, 2021, I served a true copy of the following:

FIRST AMENDED CIVIL RIGHTS COMPLAINT FOR COMPENSATORY AND DAMAGES, DECLARATORY JUDGMENT, AND INJUNCTIVE RELIEF BECAUSE OF DISABILITY BASED ON PREGNANCY, DISABILITY, AND/OR SEX, AND RETALIATION

in the matter of *Department of Fair Employment and Housing v. California Department of Corrections and Rehabilitation*, Case No.: 20STCV46485 (Related Case Nos.: 19STCV09935 and 20STCV10154) by the method indicated below:

☐ **By United States Mail** by placing a true and correct copy of the above document(s) enclosed in a sealed envelope with postage thereon fully prepaid following the Department's ordinary business practices for the collection and processing of mail, of which I am readily familiar. On the same day, that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service.

☐ **By Certified Mail** by placing a true and correct copy of the above document(s) enclosed in a sealed envelope with certified mail postage thereon fully prepaid following the Department's ordinary business practices for the collection and processing of mail, of which I am readily familiar. On the same day, that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service.

☐ **By Overnight Delivery** by placing a true and correct copy of the above document(s) in a sealed envelope with fees thereon fully prepaid for collection and overnight delivery at an office or other facility maintained by _____ or delivering to an authorized courier or driver authorized by the overnight service.

☐ **By Facsimile Transmission** by transmitting a true and correct copy of the above document(s) by facsimile transmission to the fax number listed below. The facsimile machine utilized complied with California Rules of Court, Rule 2.306, and no error was reported by the machine. The transmission was confirmed as complete, a copy of which is attached hereto.

☐ **By Personal Delivery** by personally delivering a true and correct copy of the above document(s) to the person or entity at the address set forth below, in accordance with Code of Civil Procedure section 1011(a).

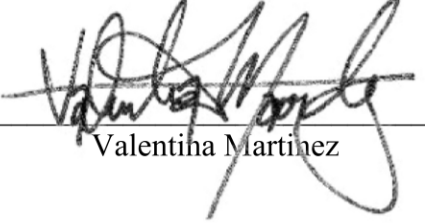
1 ☒ **By E-Mail** by forwarding a true and correct copy of the above document(s) via e-mail to the
2 person(s) at the e-mail address(es) set forth below.

3 Serena M. Warner
4 Gokalp Y. Gurer
5 Angelo, Kilday & Kilduff, LLP
6 601 University Avenue, Suite # 150
7 Sacramento, CA 95825
8 swarner@akk-law.com
9 ggurer@akk-law.com

Attorney for Defendant, California Department
of Corrections and Rehabilitation,
In the Matter of DFEH v. CDCR
Case No.: 20STCV46485

10 I declare under penalty of perjury under the laws of the State of California that the foregoing
11 is true and correct.

12 Executed on March 26, 2021, at Los Angeles, California.

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15 _____
16 Valentina Martinez
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