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Superior Court of CA,
County of Santa Clara
25CV460837
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11 **IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA**
12 **COUNTY OF SANTA CLARA**

13 JAMES BURROUGHS, individually

14 Plaintiff,

15 v.

16 WEST VALLEY CONSTRUCTION COMPANY,
17 INC., a California Corporation, and DOES 1
18 through 50, inclusive.

19 Defendants.

Case No. 25CV460837

COMPLAINT FOR DAMAGES

1. Retaliation in Violation of FEHA (Government Code §12940, et seq.);
2. Retaliation in Violation of Labor Code §1102.5;
3. Retaliation in Violation of Labor Code § 98.6;
4. Disability Discrimination in Violation of FEHA (Government Code §12940, et seq.);
5. Failure to Engage in Good Faith Interactive Process in Violation of FEHA (Government Code §12940, et seq.);
6. Failure to Provide Reasonable Accommodations in Violation of FEHA (Government Code §12940, et seq.);
7. California Whistleblower Protection Act (Government Code § 8547.1);
8. Hostile Work Environment Harassment in Violation of FEHA (Government Code § 12940, et seq.);
9. Failure to Prevent Discrimination and Harassment in Violation of FEHA (Government Code § 12940, et seq.);
10. Intentional Infliction of Emotional Distress
11. Wrongful Termination in Violation of Public Policy

DEMAND FOR JURY TRIAL

1 16. Around this time, Mr. Burroughs also noticed that his direct boss, Mr. Preisendorf, and the
2 Vice President of Operations, Mike Renn (“Renn”), displayed an attitude of being concerned about doing
3 only the bare minimum required by regulation about workplace safety. This perception was shared by a
4 few of the other safety managers who had been with the company for some time via comments including,
5 “they don’t care about [safety] training,” and “all they care about is checking the boxes.” Mr. Burroughs
6 brought specific observed regulatory violations to the attention of Mr. Preisendorf who dismissed his
7 concerns.

8 17. The following discrimination occurred when WWVC discriminated against Mr. Burroughs
9 on the basis of his disability, and for complaining about the company’s illegal practices.

10 18. On or around February 26, 2024, Mr. Burroughs received a new job description with a
11 change to the physical requirements section, via email. Mr. Burroughs received instructions to
12 electronically acknowledge the new job description and sent it back. The new job description for Mr.
13 Burroughs’ Safety Manager job contained specific changes to the “physical requirements” for the position.

14 19. The new physical requirements for the job required that Mr. Burroughs be able to lift 100
15 pounds. Mr. Burroughs’ original job description did not require him to lift 100 pounds. Mr. Boroughs had
16 never been required to lift 100 pounds while working for WVCC.

17 20. WVCC imposed this new job requirement on Mr. Boroughs in retaliation for him
18 complaining about safety at WVCC’s worksite.

19 21. After receiving the email on February 26, 2024, Mr. Burroughs called Jeanete Gallbraith
20 (“Gallbraith”), Vice Present, Human Resources, and asked why the new job description contained a more
21 strenuous physical requirement than the job description provided to him at hiring. In explanation, Ms.
22 Gallbraith described that herself and Mr. Preisendorf were in the process of revising all job descriptions.

23 22. Further, Mr. Burroughs explained that objects estimated to weigh over 50lbs should be lifted
24 by two individuals to prevent back injury. Ms. Gallbraith responded by asking Mr. Burroughs if there was
25 a specific OSHA regulation which prohibited employees from being required to lift a 100lb object. She
26 added that Mr. Burroughs did not have to sign the new job description if he did not want to. Mr. Burroughs
27 declared that he would research the matter and get back with her. At no time did Mr. Burroughs tell Ms.
28 Gallbraith that he may not be able to meet the new requirement of lifting 100lbs.

1 23. Approximately one or two weeks later, Ms. Gallbraith contacted Mr. Burroughs inquiring
2 if he had found any regulatory prohibition regarding employees being required to lift 100lbs. Mr.
3 Burroughs responded via email explaining that it was his position, as a 30-year safety professional, that it
4 was industry standard and best practice that objects weighing more than 50lbs would require at least two
5 employees to lift/move. Mr. Burroughs explained that it was foreseeable that requiring an employee to be
6 able to lift/move 100lbs would likely lead to increased incidents of employee back injury claims. Mr.
7 Burroughs also pointed out California Division of Safety and Health’s (“Cal-OSHA”) use of the Title 8
8 “General Duty Clause” as a potential means by which an employer could be penalized should an employee
9 be seriously injured because of the 100lbs job requirement.

10 24. On or around February 29, 2024, Mr. Burroughs visited the Homestead Road project. Mr.
11 Burroughs observed that the shoring was insufficient in a large excavation pit area, where workers had not
12 yet begun working. While on the other hand, in the area where the employees were working, Mr.
13 Burroughs’ noted that the trench shoring looked satisfactory and gave it a pass.

14 25. On March 18, 2024, a boom type lift was delivered to a WVCC project, the El Cerrito
15 project with no certified operator. Craig Woolworth (“Woolworth”), Union Foreman, Operating Engineers
16 Union, had alerted Mr. Burroughs that he was not certified to operate this type of lift. However, when Mr.
17 Burroughs called Mr. Preisendorf to discuss, Mr. Preisendorf argued that employees can operate if they
18 had been certified on ‘straight mast type lift’, to which Mr. Burroughs responded that this is not true. These
19 are two different types of machines with different characteristics.

20 26. On March 19, 2024, Mr. Burroughs informed Mr. Preisendorf that employees without
21 proper rigger certification were routinely rigging objects for hoisting with the WVCC crane. Mr.
22 Preisendorf argued that employees were not required to be certified and later provided evidence from a
23 safety meeting that the rigging topic was covered over a year in the past. Mr. Preisendorf sarcastically
24 asked Mr. Burroughs, “Would we need to have certifications if we were hoisting marshmallows?”

25 27. On March 20, 2024, Mr. Burroughs was told to report to the main office for an investigation.
26 Mr. Burroughs was not told the nature of the meeting/investigation. When Mr. Burroughs arrived, both
27 Mr. Preisendorf and Ms. Gallbriath questioned Mr. Burroughs’ past training, and aggressively questioned
28 him about an incident at a work location in Cupertino where WVCC was installing main water line down

1 Homestead Road, and he had visited the site and conducted an inspection. Mr. Burroughs was informed
2 that they were concerned with the appearance of the shoring in the non-working area. However, Mr.
3 Burroughs' inspection was to the west of that site, an area that was shored where they were working. Mr.
4 Burroughs indicated a 'pass' because the shoring was sufficient in the area they were working. Mr.
5 Preisendorf alleged that Mr. Burroughs did not conduct a worksite inspection properly. Mr. Preisendorf
6 told Mr. Burroughs he failed to stop work on the Homestead Road project.

7 28. On March 20, 2024, after meeting with Mr. Preisendorf and Ms. Gallbraith, Mr. Burroughs
8 visited the Cal Water BG-4 project in Atherton. Mr. Burroughs then called Mr. Preisendorf to inform him
9 that Mr. Burroughs had stopped work at the Cal Water BG-4 project due to a fall hazard with potential
10 impalement hazards and crew members not having any fall protection equipment. Mr. Preisendorf said
11 there was an exemption and did not agree with Mr. Burroughs. However, Mr. Burroughs' maintained that
12 OSHA would have cited for the unsafe job. Mr. Preisendorf then asked Mr. Burroughs to measure the depth
13 and photograph and send him a photo.

14 29. On the same day, March 20, 2024, Mr. Preisendorf called Mr. Burroughs and asked him to
15 drive to the main office at around 4:45 PM.

16 30. On the same day, March 20, 2024, Mr. Preisendorf and Ms. Gallbraith terminated Mr.
17 Burroughs' employment without specific reason and escorted Mr. Burroughs from the building and
18 instructed him to turn over company items from his company vehicle. They then called an Uber ride to
19 pick him up.

20 31. On March 28, 2024, Mr. Burroughs received a package from WVCC of his personal items
21 from the office, however an important item was missing. Mr. Burroughs' specialized charger for his
22 prosthetic leg was not in this package of his personal belongings.

23 32. On information and belief, WVCC terminated Mr. Burroughs' employment due to the safety
24 issue that occurred on March 20, 2024, as a pretext, when in actuality he was terminated on the basis of
25 his disability, and for complaining about the company's illegal practices. Mr. Burroughs did not stop work
26 on the Homestead Road project because the area the employees were performing work was safe.

27 33. On information and belief, the Homestead Road project required a special permit from
28 California Division of Safety and Health ("Cal-OSHA") which required the applicant to name a person

1 who will be designated as the “Competent Person” for safety on the project who would have the authority,
2 responsibility, and civil duty to stop work whenever conditions were unsafe. WVCC named Mr.
3 Woolworth as the Competent Person for the Homestead Road project.

4 34. On information and belief, Mr. Woolworth had greater overall authority over the worksite
5 at the Homestead Road project of the workers, equipment, as he was physically on the project throughout
6 the entire shift. Mr. Burroughs on the other hand had only been on the worksite approximately two hours.
7 Mr. Woolworth was in charge of the work, directed activities, and employees. Mr. Woolworth had been
8 employed by WVCC for many years whereas Mr. Burroughs had only been employed for two months.

9 35. On information and belief, Mr. Woolworth was the supervisor on the Homestead Road
10 project and had, according to Mr. Preisendorf’s standards, had failed to stop work or recognize an unsafe
11 worksite condition, yet Mr. Woolworth was not terminated for continuing work on the Homestead Road
12 project.

13 36. On information and belief, when Mr. Burroughs brought up repeated concerns of observed
14 non-compliance with CCR Title 8 during work activities, his concerns were dismissed by WVCC.

15 37. On information and belief, Mr. Burroughs’ employer grew concerned when it became
16 known to them the extent of his physical disability and the sudden request to accept/acknowledge a new
17 description with enhanced physical requirements for his position/title was an attempt by the employer to
18 create an environment whereby it would be easier to terminate his employment.

19 38. Up until knowledge of his disability, Mr. Burroughs had never received a disciplinary write-
20 up and was a well-regarded and valued employee.

21 39. In violation of Cal. Gov. Code §12940, Plaintiff was discriminated against based on his
22 disability. Plaintiff is informed and believes that WVCC became aware of his disability only after his hire
23 and that other co-workers without a disability have been given opportunities for promotion and
24 advancement as well as his previous position.

25 40. Both California and Federal Law require employers such as WVCC to engage with an
26 employee with a disability in a process to find a solution to the issues created by the disability. WVCC did
27 not do so.

28 41. WVCC retaliated against Mr. Burroughs by forcing a new job description for his position,

1 one which negatively impacted his disability, disregarding his complaints about illegal and unsafe
2 practices, and ultimately wrongfully terminating him.

3 42. Changing the requirement that Mr. Burroughs be able to lift 100 lbs. was done to directly
4 discriminate against him because of his physical limitations.

5 43. On information and belief, WVCC failed to investigate Mr. Burroughs' reports, concerns,
6 and complaints. Instead, WVCC terminated Mr. Burroughs.

7 44. WVCC's actions against Mr. Burroughs caused, and continue to cause, Mr. Burroughs to
8 suffer significant emotional distress. Mr. Burroughs intends to seek damages from WVCC under the Fair
9 Employment and Housing Act ("FEHA") The seriousness of these claims places WVCC at an elevated
10 risk of liability for monetary damages, including punitive damages.

11 45. Plaintiff experienced retaliation for raising concerns of unsafe and illegal practices to
12 Defendant. After complaining about the unsafe and illegal practices allowed to exist by Defendant, Mr.
13 Burroughs was used as an example to instill fear and a means to keep quiet about said unsafe and illegal
14 practices.

15 46. Throughout his employment, Plaintiff made a complaint to at least one other Safety
16 Manager that he did not feel that Mr. Preisendorf cared about the safety concerns he was citing. Despite
17 Plaintiff's complaints of retaliation, Defendant did not remedy the situation.

18 47. Defendant has discriminated and retaliated against Mr. Burroughs based on him bringing
19 up violations of OSHA regulations, statutes, and expressing his concerns for lack of policies and
20 procedures to align with OSHA in violation of the California Whistleblower Protection Act, Gov. Code §
21 8547.1 which allows employees to report violations of law and are to be free from retaliation for doing so,
22 and California Labor Code § 1102.5 which prohibits employers from retaliating against whistleblowing
23 employees who inform the government or police about the employer breaking the law. Defendants failed
24 to prevent the foregoing discrimination and retaliation. As a result of such conduct, Defendants have caused
25 Mr. Burroughs intentional infliction of emotional distress, stress, and anxiety.

26 48. As a result of the discrimination and retaliation Plaintiff was wrongfully terminated.

27 49. Plaintiff's superiors created a hostile work environment and retaliated against Plaintiff after
28 he complained about the unsafe and illegal practices allowed by his superiors, he experienced at WVCC.

1 58. Defendants' conduct was a substantial factor in causing Plaintiff's harm.

2 59. As a result of Defendants' discriminatory and retaliatory treatment Plaintiff suffered
3 emotional distress and continues to suffer embarrassment, humiliation, mental and emotional pain and
4 distress, depression, anger, worry, anxiety, negative feelings, and discomfort.

5 60. The conduct of Defendants and each of them as described above was malicious, fraudulent,
6 or oppressive and done with a willful and conscious disregard for Plaintiff's rights. Defendants and each
7 of them, and their agents/employees or supervisors, authorized, condoned, and ratified the unlawful
8 conduct of each other. Consequently, Plaintiff is entitled to punitive damages against each of said
9 Defendants.
10

11 ***SECOND CAUSE OF ACTION***

12 *Retaliation in Violation of Labor Code §1102.5, et seq.*

13 *(Against All Defendants)*

14 61. Plaintiff re-pleads, re-alleges, and incorporates by reference each allegation set forth in this
15 Complaint.

16 62. At all relevant times, California Labor Code was in full force and effect, and binding on
17 Defendants.

18 63. Labor Code §1102.5 makes it an unlawful for an employer to retaliate against an employee
19 who has for disclosing information the employee reasonable believes discloses a violation of state or
20 federal statute, or a violation of or noncompliance with a local, state, or federal rule or regulation.

21 64. Plaintiff made multiple complaints to Defendants regarding the company's illegal practices
22 and discrimination he was experiencing from his manager based on Plaintiff's disability.
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24 65. Defendants retaliated against Plaintiff by forcing a new job description for his position, one
25 which negatively impacted his disability, disregarding his complaints about illegal and unsafe practices,
26 and ultimately wrongfully terminating him.

27 66. Plaintiff was harmed.
28

1 67. Defendants' conduct was a substantial factor in causing Plaintiff's harm.

2 68. As a direct and proximate result of the above violations, Plaintiff has suffered damages in
3 the form of past and future wage losses, bonus losses, health benefits plan deductible amount, potential
4 stock participation, and emotional distress in an amount to be proven at trial.

5 69. The conduct of Defendants and each of them as described above was malicious, fraudulent,
6 or oppressive and done with a willful and conscious disregard for Plaintiff's rights. Defendants and each
7 of them, and their agents/employees or supervisors, authorized, condoned, and ratified the unlawful
8 conduct of each other. Consequently, Plaintiff is entitled to punitive damages against each of said
9 Defendants.

10 ***THIRD CAUSE OF ACTION***

11 *Retaliation in Violation of Labor Code § 98.6*

12 *(Against All Defendants)*

13 70. Plaintiff re-pleads, re-alleges, and incorporates by reference each and every allegation set
14 forth in this Complaint.

15 71. Labor Code § 98.6 provides:

16 (a) A person shall not discharge an employee or in any manner discriminate,
17 retaliate, or take any adverse action against any employee . . . because the
18 employee . . . engaged in any conduct delineated in this chapter, including .
19 . . . Chapter 5 (commencing with Section 1101) of Part 3 of Division 2, or
20 because the employee . . . or because of the exercise by the employee or
applicant for employment on behalf of himself, herself, or others of any
rights afforded him or her.

21 (b)(1) Any employee who is discharged, threatened with discharge,
22 demoted, suspended, retaliated against, subjected to an adverse action, or in
23 any other manner discriminated against in the terms and conditions of his or
24 her employment because the employee engaged in any conduct delineated in
this chapter, including . . . Chapter 5 (commencing with Section 1101) of
Part 3 of Division 2 . . . shall be entitled to reinstatement and reimbursement
for lost wages and work benefits caused by those acts of the employer.

25 72. Defendants were Plaintiff's employer, and Plaintiff was Defendants' employee.

26 73. Plaintiff made multiple complaints to Defendants regarding the company's illegal practices
27 and discrimination he was experiencing from his manager based on Plaintiff's disability.
28

1 acknowledge a new job description with enhanced physical requirements for his position.

2 86. Plaintiff was terminated in violation of the Fair Employment and Housing Act.

3 87. Plaintiff suffered harm.

4 88. Defendant's conduct was a substantial factor in causing Plaintiff's harm.

5 89. The conduct of Defendant was a substantial factor in causing Plaintiff emotional distress,
6 including but not limited to, embarrassment, humiliation, mental and emotional pain and distress,
7 depression, anger, worry, anxiety, negative feelings, and discomfort.

8 90. Under Government Code section 12940, Plaintiff is entitled to recover economic and
9 noneconomic damages caused by Defendants' discriminatory practices based on Plaintiff's disability and
10 violation of the Fair Employment and Housing Act. Plaintiff is also entitled to reasonable attorney's fees
11 and costs pursuant to Government Code section 12965.

12 ***FIFTH CAUSE OF ACTION***

13 *Failure to Engage in Good Faith Interactive Process in Violation of FEHA*

14 *(Government Code § 12940, et seq.)*

15 *(Against All Defendants)*

16 91. Plaintiff re-pleads, re-alleges, and incorporates by reference each and every allegation set
17 forth in this Complaint.

18 92. Government Code section 12940(n) provides in relevant part:

19 It is an unlawful employment practice. . . (n) For an employer or other
20 entity covered by this part to fail to engage in a timely, good faith,
21 interactive process with the employee or applicant to determine effective
22 reasonable accommodations, if any, in response to a request for reasonable
accommodation by an employee or applicant with a known physical or
mental disability or known medical condition.

23 93. California Code of Regulations, Title 2 section 11069 provides in relevant part:

24 (a) Interactive Process. When needed to identify or implement an
25 effective, reasonable accommodation for an employee or applicant with a
26 disability, the FEHA requires a timely, good faith, interactive process
27 between an employer or other covered entity and an applicant, employee,
28 or the individual's representative, with a known physical or mental
disability or medical condition. Both the employer or other covered entity
and the applicant, employee or the individual's representative shall

1 exchange essential information identified below without delay or
2 obstruction of the process.

3 94. Defendant was Plaintiff's employer, and Plaintiff was Defendants' employee.

4 95. Defendant was aware that Plaintiff had a disability that limited a major life activity.

5 96. Plaintiff was able to perform the essential job duties of Plaintiff's position with reasonable
6 accommodation for Plaintiff's disability.

7 97. Plaintiff at all times was willing to participate in an interactive process to determine
8 reasonable accommodation.

9 98. Defendant refused to participate in a timely good-faith interactive process.

10 99. Defendant could have made a reasonable accommodation had it timely engaged in the
11 interactive process.

12 100. Plaintiff suffered harm.

13 101. Defendant's conduct was a substantial factor in causing Plaintiff's harm.

14 102. The conduct of Defendant was a substantial factor in causing Plaintiff emotional distress,
15 including but not limited to, embarrassment, humiliation, mental and emotional pain and distress,
16 depression, anger, worry, anxiety, negative feelings, and discomfort.

17 103. Under Government Code section 12940, Plaintiff is entitled to recover economic and
18 noneconomic damages. Plaintiff is also entitled to reasonable attorney's fees and costs pursuant to
19 Government Code section 12965.

20 ***SIXTH CAUSE OF ACTION***

21 *Failure to Provide Reasonable Accommodations in Violation of FEHA*

22 *(Government Code § 12940, et seq.)*

23 *(Against All Defendants)*

24 104. Plaintiff re-pleads, re-alleges, and incorporates by reference each and every allegation set
25 forth in this Complaint.

26 105. Government Code section 12940(m)(1) provides in relevant part:

27 It is an unlawful employment practice. . . (m)(1) [f]or an employer or other
28 entity covered by this part to fail to make reasonable accommodation for
the known physical or mental disability of an applicant or employee.

1 106. California Code of Regulations, Title 2 section 11068 provides in relevant part:

2 (a) Affirmative Duty. An employer or other covered entity has an
3 affirmative duty to make reasonable accommodation(s) for the disability of
4 any individual applicant or employee if the employer or other covered
5 entity knows of the disability, unless the employer or other covered entity
6 can demonstrate, after engaging in the interactive process, that the
7 accommodation would impose an undue hardship.

8 . . .

9 (e) Any and all reasonable accommodations. An employer or other
10 covered entity is required to consider any and all reasonable
11 accommodations of which it is aware or that are brought to its attention by
12 the applicant or employee, except ones that create an undue hardship. The
13 employer or other covered entity shall consider the preference of the
14 applicant or employee to be accommodated but has the right to select and
15 implement an accommodation that is effective for both the employee and
16 the employer or other covered entity.

17 107. Defendant was Plaintiff's employer, and Plaintiff was Defendants' employee.

18 108. Defendant was aware that Plaintiff had a disability that limited a major life activity, as well
19 as a history of disability that limited a major life activity.

20 109. Plaintiff was able to perform the essential job duties of Plaintiff's position with reasonable
21 accommodation for Plaintiff's disability. Defendant refused to provide reasonable accommodation to
22 Plaintiff. Instead, Defendant retaliated against Plaintiff by forcing a new job description for his position,
23 one which negatively impacted his disability, disregarding his complaints about illegal and unsafe
24 practices, and ultimately wrongfully terminating him.

25 110. Plaintiff was terminated in violation of the Fair Employment and Housing Act by
26 Defendants due to Plaintiff's disability.

27 111. Plaintiff suffered harm.

28 112. Defendant's conduct was a substantial factor in causing Plaintiff's harm.

113. The conduct of Defendant was a substantial factor in causing Plaintiff emotional distress,
including but not limited to, embarrassment, humiliation, mental and emotional pain and distress,
depression, anger, worry, anxiety, negative feelings, and discomfort.

114. Under Government Code section 12940, Plaintiff is entitled to recover economic and
noneconomic damages caused by Defendants' discriminatory practices based on Plaintiff's disability and

1 violation of the Fair Employment and Housing Act. Plaintiff is also entitled to reasonable attorney's fees
2 and costs pursuant to Government Code section 12965.

3 ***SEVENTH CAUSE OF ACTION***

4 *California Whistleblower Protection Act*

5 *(Government Code § 8547.1)*

6 *(Against All Defendants)*

7 115. Plaintiff re-pleads, re-alleges, and incorporates by reference each and every allegation set
8 forth in this Complaint.

9 116. Government Code § 8547.1 provides:

10 The Legislature finds and declares that state employees should be free to
11 report waste, fraud, abuse of authority, violation of law, or threat to public
12 health without fear of retribution.

13 117. Plaintiff made multiple complaints to Defendants about violations of OSHA regulations,
14 statutes, and expressed her concerns for lack of policies and procedures to align with OSHA.

15 118. Defendants retaliated against Plaintiff by terminating Plaintiff's employment.

16 119. Plaintiff was harmed.

17 120. Defendants' conduct was a substantial factor in causing Plaintiff's harm.

18 121. The conduct of Defendants and each of them as described above was malicious,
19 fraudulent, or oppressive and done with a willful and conscious disregard for Plaintiff's rights.
20 Defendants and each of them, and their agents/employees or supervisors, authorized, condoned, and
21 ratified the unlawful conduct of each other. Consequently, Plaintiff is entitled to punitive damages
22 against each of said Defendants.

23 ***EIGHTH CAUSE OF ACTION***

24 *Hostile Work Environment Harassment in Violation of FEHA*

25 *(Government Code § 12940, et seq.)*

26 *(Against All Defendants)*

27 122. Plaintiff re-pleads, re-alleges, and incorporates by reference each and every allegation set
28 forth in this Complaint.

1 It is an unlawful employment practice . . . (k) For an employer . . . to fail to
2 take all reasonable steps necessary to prevent discrimination and harassment
3 from occurring.

4 132. Defendants wrongfully failed to take all reasonable steps necessary to prevent harassment
5 and discrimination of Plaintiff based on Plaintiff's disabilities.

6 133. Plaintiff suffered and continues to suffer harm as a result of Plaintiff's treatment by
7 Defendants.

8 134. Defendants' conduct was a substantial factor in causing Plaintiff's harm.

9 135. Under Government Code section 12940, Plaintiff is entitled to recover Plaintiff's economic
10 and noneconomic damages caused by Defendants' unlawful practices. Plaintiff is also entitled to
11 reasonable attorney's fees and costs pursuant to Government Code section 12965.

12 136. The conduct of Defendants and each of them as described above was malicious, fraudulent,
13 or oppressive and done with a willful and conscious disregard for Plaintiff's rights. Defendants and each
14 of them, and their agents/employees or supervisors, authorized, condoned, and ratified the unlawful
15 conduct of each other. Consequently, Plaintiff is entitled to punitive damages against each of said
16 Defendants.

17 ***TENTH CAUSE OF ACTION***

18 *Intentional Infliction of Emotional Distress*

19 *(Against All Defendants)*

20 137. Plaintiff re-pleads, re-alleges, and incorporates by reference each and every allegation set
21 forth in this Complaint.

22 138. Defendant's treatment of Plaintiff as discussed supra, exceeds the bounds of decency, is
23 intolerable within our civilized community, and is therefore outrageous.

24 139. Defendant's actions, as discussed supra, were intended to cause Plaintiff to suffer the
25 resulting emotional distress.

26 140. The conduct of Defendant was a substantial factor in causing Plaintiff emotional distress,
27 including but not limited to, embarrassment, humiliation, mental and emotional pain and distress,
28 depression, anger, worry, anxiety, negative feelings, and discomfort.

1 141. Plaintiff was harmed.

2 142. Defendant's conduct was a substantial factor in causing Plaintiff's harm.

3 143. The conduct of Defendant as described above was malicious, fraudulent, or oppressive and
4 done with a willful and conscious disregard for Plaintiff's rights. Defendant and each of them, and their
5 agents/employees or supervisors, authorized, condoned and ratified the unlawful conduct of each other.
6 Consequently, Plaintiff is entitled to punitive damages against each of said Defendants.

7 ***ELEVENTH CAUSE OF ACTION***

8 *Wrongful Termination in Violation of Public Policy*

9 *(Against All Defendants)*

10 144. Plaintiff re-pleads, re-alleges, and incorporates by reference each and every allegation set
11 forth in this Complaint.

12 145. Art. I, § 8, of the California Constitution provides that a person may not be disqualified
13 from pursuing a profession or employment because of their disability.

14 146. At all times herein mentioned in this complaint, Government Code Section 12940 (a), was
15 in full force and effect and were binding on the Defendants and the Defendants were subject to their terms,
16 and therefore Defendant was required to refrain from violations of public policy, including discrimination
17 based on disability in violation of FEHA and in retaliation for complaining of said discrimination.

18 147. Defendants were Plaintiff's employer, and Plaintiff was Defendants' employee.

19 148. Defendant terminated Plaintiff in violation of Plaintiff's rights and public policy.

20 149. Plaintiff is informed and believes and thereon alleges that his protected status (disability)
21 and/or his protestation against being discriminated against based on said protected status as alleged above,
22 were, in part, factors in Defendants' decision to terminate Plaintiff's employment.

23 150. Plaintiff was harmed.

24 151. Defendants' conduct was a substantial factor in causing Plaintiff's harm.

25 152. As a proximate result of Defendants' conduct, Plaintiff has suffered special damages in the
26 form of lost earnings, benefits and/or out of pocket expenses in an amount according to proof at the time
27 of trial. As a further direct and proximate result of Defendants' conduct, Plaintiff will suffer additional
28

1 special damages in the form of lost future earnings, benefits and/or other prospective damages in an amount
2 according to proof at the time of trial.

3 153. As a further direct and proximate result of Defendants' conduct, Plaintiff has suffered loss
4 of financial stability, peace of mind and future security, and has suffered embarrassment, humiliation,
5 mental and emotional pain and distress and discomfort, all to his detriment and damage in amounts not
6 fully ascertained but within the jurisdiction of this court and subject to proof at the time of trial.

7 154. In violation of public policy, Defendants terminated Plaintiff because he is a 62-year-old
8 disabled male who was wrongfully terminated, despite the fact that Defendants knew that Plaintiff was
9 experienced and able to perform the essential functions of his position and had done so since 2023 as a
10 Regional Safety Manager.

11 155. The conduct of Defendants as described above was malicious, fraudulent, or oppressive and
12 done with a willful and conscious disregard for Plaintiff's rights. Defendant and each of them, and their
13 agents/employees or supervisors, authorized, condoned and ratified the unlawful conduct of each other.
14 Consequently, Plaintiff is entitled to punitive damages against each of said Defendants.

15 **PRAYER FOR RELIEF**

16 **WHEREFORE**, Plaintiff prays for judgment against the Defendants, and each of them, as
17 follows:

- 18 1. Compensatory damages including emotional distress damages and lost wages, benefits
19 and interest in a sum according to proof;
- 20 2. Interest on judgment, including prejudgment interest, at the legal rate;
- 21 3. Punitive damages against Defendant in a sum according to proof;
- 22 4. Attorney's fees and costs; and
- 23 5. For any further legal and equitable relief, the Court deems proper.

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25 Dated: March 11, 2025.

RATNER MOLINEAUX, LLP

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David S. Ratner
Shelley A. Molineaux
Attorneys for Plaintiff James Burroughs

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DEMAND FOR JURY TRIAL

Plaintiff hereby demands trial of his claims by jury to the extent authorized by law.

Respectfully submitted,

Dated: March 11, 2025.

RATNER MOLINEAUX, LLP



David S. Ratner
Shelley A. Molineaux
Attorneys for Plaintiff James Burroughs

EXHIBIT A



Civil Rights Department

KEVIN KISH, DIRECTOR

651 Bannan Street, Suite 200 | Sacramento | CA | 95811
1-800-884-1684 (voice) | 1-800-700-2320 (TTY) | California's Relay Service at 711
calcivilrights.ca.gov | contact.center@calcivilrights.ca.gov

March 11, 2025

Shelley Molineaux
2950 Buskirk Ave., Suite 300
Walnut Creek, CA 94597

RE: **Notice to Complainant's Attorney**
CRD Matter Number: 202503-28470811
Right to Sue: Burroughs / West Valley Construction Company, Inc.

Dear Shelley Molineaux:

Attached is a copy of your complaint of discrimination filed with the Civil Rights Department (CRD) 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, CRD 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 CRD does not review or edit the complaint form to ensure that it meets procedural or statutory requirements.

Sincerely,

Civil Rights Department



Civil Rights Department

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March 11, 2025

RE: Notice of Filing of Discrimination Complaint
CRD Matter Number: 202503-28470811
Right to Sue: Burroughs / West Valley Construction Company, Inc.

To All Respondent(s):

Enclosed is a copy of a complaint of discrimination that has been filed with the Civil Rights Department (CRD) 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.

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

No response to CRD is requested or required.

Sincerely,

Civil Rights Department



Civil Rights Department

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March 11, 2025

James Burroughs
[REDACTED]
[REDACTED]

RE: Notice of Case Closure and Right to Sue
CRD Matter Number: 202503-28470811
Right to Sue: Burroughs / West Valley Construction Company, Inc.

Dear James Burroughs:

This letter informs you that the above-referenced complaint filed with the Civil Rights Department (CRD) has been closed effective March 11, 2025 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.

After receiving a Right-to-Sue notice from CRD, you may have the right to file your complaint with a local government agency that enforces employment anti-discrimination laws if one exists in your area that is authorized to accept your complaint. If you decide to file with a local agency, you must file before the deadline for filing a lawsuit that is on your Right-to-Sue notice. Filing your complaint with a local agency does not prevent you from also filing a lawsuit in court.

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 CRD Notice of Case Closure or within 300 days of the alleged discriminatory act, whichever is earlier.

Sincerely,

Civil Rights Department

1 on December 18, 2023, as the Regional Safety Manger until his wrongful termination on
2 March 20, 2024.

3 At all times relevant, Mr. Burroughs had a strong work ethic, consistent contributions
4 to positive business outcomes, a robust skill set and effective leadership skills which all
5 resulted positively in his past employment with 30 years of safety professional experience.

6 Mr. Burroughs is a leg amputee and utilizes a prosthetic device to ambulate. Mr.
7 Burroughs also routinely used a cane when he was out in the field visiting worksites.

8 On or around late-January of 2024, at a weekly safety manager meeting held by
9 Assistant Vice President of Operations, Darin Preisendorf ("Preisendorf"), via Zoom, Mr.
10 Burroughs suggested that WVCC require initial atmospheric monitoring when an excavation
11 reached four feet in depth. At that time, WVCC was only implementing atmospheric
12 monitoring when trench excavations reached five feet. In return, Mr. Preisendorf snapped at
13 Mr. Burroughs, and with a harsh reaction, said "Why would we want to do that?", dismissing
14 Mr. Burroughs' concerns. A few of Mr. Burroughs' fellow safety managers noticed Mr.
15 Preisendorf's reaction; one even called Mr. Burroughs after the meeting saying, "He really
16 bit your head off."

17 On or around early February of 2024, Mr. Burroughs attended another weekly safety
18 manager meeting, via Zoom, at which he complained that WVCC employees were disturbing
19 lead paint by cutting through old paint using a saw which generated smoke and heat and
20 possibly caused lead from the paint to enter the atmosphere. Mr. Preisendorf said, "Well, we
21 don't do that very often," and dismissed Mr. Burroughs' concerns. However, Mr. Burroughs
22 also learned that no testing had been done to determine if the paint in fact contained lead.

23 Around this time, Mr. Burroughs also noticed that his direct boss, Mr. Preisendorf,
24 and the Vice President of Operations, Mike Renn ("Renn"), displayed an attitude of being
25 concerned about doing only the bare minimum required by regulation about workplace
26 safety. This perception was shared by a few of the other safety managers who had been
27 with the company for some time via comments including, "they don't care about [safety]
28 training," and "all they care about is checking the boxes." Mr. Burroughs brought specific
29 observed regulatory violations to the attention of Mr. Preisendorf who dismissed his
30 concerns.

31 The following discrimination occurred when WVCC discriminated against Mr.
32 Burroughs on the basis of his disability, and for complaining about the company's illegal
33 practices .

34 On or around February 26, 2024, Mr. Burroughs received a new job description with
35 a change to the physical requirements section, via email. Mr. Burroughs received
36 instructions to electronically acknowledge the new job description and sent it back. The new
37 job description for Mr. Burroughs' Safety Manager job contained specific changes to the
38 "physical requirements" for the position.

39 The new physical requirements for the job required that Mr. Burroughs be able to lift
40 100 pounds. Mr. Burroughs' original job description did not require him to lift 100 pounds.
41 Mr. Boroughs had never been required to lift 100 pounds while working for WVCC.

42 WVCC imposed this new job requirement on Mr. Boroughs in retaliation for him
43 complaining about safety at WVCC's worksite.

44 After receiving the email on February 26, 2024, Mr. Burroughs called Jeanete
45 Gallbraith ("Gallbraith"), Vice Present, Human Resources, and asked why the new job
46 description contained a more strenuous physical requirement than the job description

1 provided to him at hiring. In explanation, Ms. Gallbraith described that herself and Mr. Preisendorf were in the process of revising all job descriptions.

2 Further, Mr. Burroughs explained that objects estimated to weigh over 50lbs should
3 be lifted by two individuals to prevent back injury. Ms. Gallbraith responded by asking Mr.
4 Burroughs if there was a specific OSHA regulation which prohibited employees from being
5 required to lift a 100lb object. She added that Mr. Burroughs did not have to sign the new job
6 description if he did not want to. Mr. Burroughs declared that he would research the matter
7 and get back with her. At no time did Mr. Burroughs tell Ms. Gallbraith that he may not be
8 able to meet the new requirement of lifting 100lbs.

9 Approximately one or two weeks later, Ms. Gallbraith contacted Mr. Burroughs
10 inquiring if he had found any regulatory prohibition regarding employees being required to lift
11 100lbs. Mr. Burroughs responded via email explaining that it was his position, as a 30-year
12 safety professional, that it was industry standard and best practice that objects weighing
13 more than 50lbs would require at least two employees to lift/move. Mr. Burroughs explained
14 that it was foreseeable that requiring an employee to be able to lift/move 100lbs would likely
15 lead to increased incidents of employee back injury claims. Mr. Burroughs also pointed out
16 California Division of Safety and Health's ("Cal-OSHA") use of the Title 8 "General Duty
17 Clause" as a potential means by which an employer could be penalized should an employee
18 be seriously injured because of the 100lbs job requirement.

19 On or around February 29, 2024, Mr. Burroughs visited the Homestead Road project.
20 Mr. Burroughs observed that the shoring was insufficient in a large excavation pit area,
21 where workers had not yet begun working. While on the other hand, in the area where the
22 employees were working, Mr. Burroughs' noted that the trench shoring looked satisfactory
23 and gave it a pass.

24 On March 18, 2024, a boom type lift was delivered to a WVCC project, the El Cerrito
25 project with no certified operator. Craig Woolworth ("Woolworth"), Union Foreman, Operating
26 Engineers Union, had alerted Mr. Burroughs that he was not certified to operate this type of
27 lift. However, when Mr. Burroughs called Mr. Preisendorf to discuss, Mr. Preisendorf argued
28 that employees can operate if they had been certified on 'straight mast type lift', to which Mr.
Burroughs responded that this is not true. These are two different types of machines with
different characteristics.

On March 19, 2024, Mr. Burroughs informed Mr. Preisendorf that employees without
proper rigger certification were routinely rigging objects for hoisting with the WVCC crane.
Mr. Preisendorf argued that employees were not required to be certified and later provided
evidence from a safety meeting that the rigging topic was covered over a year in the past.
Mr. Preisendorf sarcastically asked Mr. Burroughs, "Would we need to have certifications if
we were hoisting marshmallows?"

On March 20, 2024, Mr. Burroughs was told to report to the main office for an
investigation. Mr. Burroughs was not told the nature of the meeting/investigation. When Mr.
Burroughs arrived, both Mr. Preisendorf and Ms. Gallbraith questioned Mr. Burroughs' past
training, and aggressively questioned him about an incident at a work location in Cupertino
where WVCC was installing main water line down Homestead Road, and he had visited the
site and conducted an inspection. Mr. Burroughs was informed that they were concerned
with the appearance of the shoring in the non-working area. However, Mr. Burroughs'
inspection was to the west of that site, an area that was shored where they were working.
Mr. Burroughs indicated a 'pass' because the shoring was sufficient in the area they were

1 working. Mr. Preisendorf alleged that Mr. Burroughs did not conduct a worksite inspection
2 properly. Mr. Preisendorf told Mr. Burroughs he failed to stop work on the Homestead Road
project.

3 On March 20, 2024, after meeting with Mr. Preisendorf and Ms. Gallbraith, Mr.
4 Burroughs visited the Cal Water BG-4 project in Atherton. Mr. Burroughs then called Mr.
5 Preisendorf to inform him that Mr. Burroughs had stopped work at the Cal Water BG-4
6 project due to a fall hazard with potential impalement hazards and crew members not having
any fall protection equipment. Mr. Preisendorf said there was an exemption and did not
agree with Mr. Burroughs. However, Mr. Burroughs' maintained that OSHA would have cited
for the unsafe job. Mr. Preisendorf then asked Mr. Burroughs to measure the depth and
photograph and send him a photo.

7 On the same day, March 20, 2024, Mr. Preisendorf called Mr. Burroughs and asked
him to drive to the main office at around 4:45 PM.

8 On the same day, March 20, 2024, Mr. Preisendorf and Ms. Gallbraith terminated Mr.
9 Burroughs' employment without specific reason and escorted Mr. Burroughs from the
building and instructed him to turn over company items from his company vehicle. They then
called an Uber ride to pick him up.

10 On March 28, 2024, Mr. Burroughs received a package from WVCC of his personal
11 items from the office, however an important item was missing. Mr. Burroughs' specialized
charger for his prosthetic leg was not in this package of his personal belongings.

12 On information and belief, WVCC terminated Mr. Burroughs' employment due to the
13 safety issue that occurred on March 20, 2024, as a pretext, when in actuality he was
terminated on the basis of his disability, and for complaining about the company's illegal
14 practices. Mr. Burroughs did not stop work on the Homestead Road project because the
area the employees were performing work was safe.

15 On information and belief, the Homestead Road project required a special permit
16 from California Division of Safety and Health ("Cal-OSHA") which required the applicant to
17 name a person who will be designated as the "Competent Person" for safety on the project
who would have the authority, responsibility, and civil duty to stop work whenever conditions
were unsafe. WVCC named Mr. Woolworth as the Competent Person for the Homestead
Road project.

18 On information and belief, Mr. Woolworth had greater overall authority over the
19 worksite at the Homestead Road project of the workers, equipment, as he was physically on
20 the project throughout the entire shift. Mr. Burroughs on the other hand had only been on
the worksite approximately two hours. Mr. Woolworth was in charge of the work, directed
activities, and employees. Mr. Woolworth had been employed by WVCC for many years
whereas Mr. Burroughs had only been employed for two months.

21 On information and belief, Mr. Woolworth was the supervisor on the Homestead
22 Road project and had, according to Mr. Preisendorf's standards, had failed to stop work or
recognize an unsafe worksite condition, yet Mr. Woolworth was not terminated for continuing
work on the Homestead Road project.

23 On information and belief, when Mr. Burroughs brought up repeated concerns of
24 observed non-compliance with CCR Title 8 during work activities, his concerns were
dismissed by WVCC.

25 On information and belief, Mr. Burroughs' employer grew concerned when it became
known to them the extent of his physical disability and the sudden request to

1 accept/acknowledge a new description with enhanced physical requirements for his
2 position/title was an attempt by the employer to create an environment whereby it would be
easier to terminate his employment.

3 Up until knowledge of his disability, Mr. Burroughs had never received a disciplinary
write-up and was a well-regarded and valued employee.

4 In violation of Cal. Gov. Code §12940, Plaintiff was discriminated against based on
his disability. Plaintiff is informed and believes that WVCC became aware of his disability
5 only after his hire and that other co-workers without a disability have been given
opportunities for promotion and advancement as well as his previous position.

6 Both California and Federal Law require employers such as WVCC to engage with
an employee with a disability in a process to find a solution to the issues created by the
7 disability. WVCC did not do so.

8 WVCC retaliated against Mr. Burroughs by forcing a new job description for his
position, one which negatively impacted his disability, disregarding his complaints about
illegal and unsafe practices, and ultimately wrongfully terminating him.

9 Changing the requirement that Mr. Burroughs be able to lift 100 lbs. was done to
directly discriminate against him because of his physical limitations.

10 On information and belief, WVCC failed to investigate Mr. Burroughs' reports,
concerns, and complaints. Instead, WVCC terminated Mr. Burroughs.

11 WVCC's actions against Mr. Burroughs caused, and continue to cause, Mr.
Burroughs to suffer significant emotional distress. Mr. Burroughs intends to seek damages
12 from WVCC under the Fair Employment and Housing Act ("FEHA") The seriousness of
these claims places WVCC at an elevated risk of liability for monetary damages, including
13 punitive damages.

14 Plaintiff experienced retaliation for raising concerns of unsafe and illegal practices to
Defendant. After complaining about the unsafe and illegal practices allowed to exist by
15 Defendant, Mr. Burroughs was used as an example to instill fear and a means to keep quiet
about said unsafe and illegal practices.

16 Throughout his employment, Plaintiff made a complaint to at least one other Safety
Manager that he did not feel that Mr. Preisendorf cared about the safety concerns he was
17 citing. Despite Plaintiff's complaints of retaliation, Defendant did not remedy the situation.

18 Defendant has discriminated and retaliated against Mr. Burroughs based on him
bringing up violations of OSHA regulations, statutes, and expressing his concerns for lack of
policies and procedures to align with OSHA in violation of the California Whistleblower
19 Protection Act, Gov. Code § 8547.1 which allows employees to report violations of law and
are to be free from retaliation for doing so, and California Labor Code § 1102.5 which
20 prohibits employers from retaliating against whistleblowing employees who inform the
government or police about the employer breaking the law. Defendants failed to prevent the
21 foregoing discrimination and retaliation. As a result of such conduct, Defendants have
caused Mr. Burroughs intentional infliction of emotional distress, stress, and anxiety.

22 As a result of the discrimination and retaliation Plaintiff was wrongfully terminated.

23 Plaintiff's superiors created a hostile work environment and retaliated against Plaintiff
after he complained about the unsafe and illegal practices allowed by his superiors, he
24 experienced at WVCC.

25 As of result of Defendants' actions, Plaintiff suffered emotionally and psychologically
from the retaliation visited upon him by Defendant. As a result of the hostile work

1 environment, Plaintiff has suffered and continues to suffer embarrassment, humiliation,
2 mental and emotional pain and distress, depression, anger, worry, anxiety, negative
3 feelings, and discomfort.

4 As a result of Defendants' actions, Plaintiff has lost his bonus, health benefits plan
5 deductible amount, and potential stock participation. Plaintiff now has continued health care
6 through COBRA with a high deductible coverage plan with the employer agreeing to
7 reimbursement for the deductible through employer contributions to the Health Savings
8 Account. As a result of his termination, Plaintiff is unsure WVCC will be contributing to his
9 Health Savings Account.
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1 VERIFICATION

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

6 On March 11, 2025, I declare under penalty of perjury under the laws of the State of
7 California that the foregoing is true and correct.

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Walnut Creek, CA