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14 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
15 **COUNTY OF SAN MATEO**

16 BRENNAN LAWSON, an individual,
17
18 Plaintiff,

19 vs.

20 META PLATFORMS, INC., a Delaware
21 Corporation f/k/a "FACEBOOK";
22 FACEBOOK, INC., a Delaware Corporation;
23 and DOES 1-25, inclusive,
24
25 Defendants.

Electronically
FILED
by Superior Court of California, County of San Mateo
ON **7/5/2022**
By /s/ Una Finau
Deputy Clerk

26 Case No.: 22-CIV-02723
27 **COMPLAINT FOR DAMAGES AND**
28 **DEMAND FOR JURY TRIAL**

- 29 (1) **Whistleblower Retaliation**
(Cal. Lab. Code § 1102.5)
- 30 (2) **Disability Discrimination**
(Cal. Gov't. Code § 12940(a))
- 31 (3) **Failure to Engage in a Good-Faith**
Interactive Process
(Cal. Gov't. Code § 12940(n))
- 32 (4) **Failure to Accommodate**
(Cal. Gov't. Code § 12940(m))
- 33 (5) **Failure to Prevent Discrimination**
(Cal. Gov't. Code § 12940(k))

1 **NATURE OF THE ACTION**

2 Plaintiff alleges whistleblower retaliation under the California Labor Code section 1102.5 and
3 disability-related causes of action for violations of the Fair Employment and Housing Act (“FEHA,”
4 Govt. Code §12940, et seq.) against his former employer, Defendants Meta Platforms, Inc. f/k/a
5 Facebook, Inc. (“Meta” or “Facebook”) and DOEs 1-25, inclusive. He seeks economic and general
6 damages, punitive damages, equitable and injunctive relief, and reimbursement of reasonable
7 attorneys’ fees and costs.

8 **JURISDICTION AND VENUE**

9 1. Plaintiff’s employment occurred in the City of Menlo Park, County of San Mateo.

10 2. Personal jurisdiction is proper under the California Code of Civil Procedure section
11 410.10 because the Defendants, and each of them, have maintained sufficient minimum contacts
12 with the State to make the exercise of personal jurisdiction reasonable and just under contemporary
13 standards. Defendants are residents of and/or are doing business in, and are upon information and
14 belief headquartered and maintain their principal place of business in, the County of San Mateo,
15 State of California.

16 3. This action seeks damages in excess of \$25,000, and the action is not of otherwise
17 limited jurisdiction. (*See* Code Civ. Proc. §§ 86, 88.)

18 4. Subject matter jurisdiction in this matter is conferred by California Constitution,
19 Article VI, sections 11-12 and the California Code of Civil Procedure section 410.50.

20 5. Jurisdiction of this Court is also invoked pursuant to the FEHA, codified as
21 California Govt. Code, §§12900-12996. Specifically, section 12965(c)(1) provides that after receiving
22 a right to sue letter from the Department of Fair Employment and Housing (“DFEH”), an
23 aggrieved individual may file a civil lawsuit “against the person, employer, labor organization or
24 employment agency named in the verified complaint within one year from the date of that notice.”

25 6. Plaintiff has fulfilled all the conditions precedent to the institution of this action
26 under Gov. Code sections 12960 and 12965.

27 7. Venue in this Court is proper pursuant to California Code of Civil Procedure section
28 395 et seq. because at least one of the Defendants resides in San Mateo County and does substantial

1 business in San Mateo County. Further, the unlawful acts described herein originated in San Mateo
2 County.

3 **PARTIES**

4 8. At all relevant times, Plaintiff was a competent adult residing in San Mateo County,
5 California. Plaintiff was an employee of Meta Platforms, Inc. f/k/a “Facebook, Inc.” (“Meta” or
6 “Facebook”) doing business as Facebook and DOES 1-25, inclusive (collectively “Defendants”).

7 9. Plaintiff is a natural person with a physical disability, perceived disability, or actual
8 and/or perceived potential disability as defined in California Government Code section 12926(m).
9 Moreover, Plaintiff was an “employee” of Defendants within the meaning of Government Code
10 section 12926(c), the applicable Industrial Wage Commission Order(s), and the California Labor
11 Code.

12 10. Throughout his employment, Plaintiff made protected disclosures within the
13 meaning of California Labor Code section 1102.5.

14 11. Plaintiff is informed and believes, and thereon alleges, that Defendants, and each of
15 them, are and at all times herein mentioned were corporations, limited liability companies,
16 unincorporated associations, partnerships or other business entities incorporated in the State of
17 Delaware, qualified to do business in the State of California and/or doing business in the State of
18 California without proper registration.

19 12. Defendants Meta Platforms, Inc., a Delaware Corporation doing business as
20 “Facebook” and formerly known as Facebook, Inc., its various known and unknown business
21 names, Facebook, Inc., a Delaware Corporation and its various known and unknown business
22 names, and DOES 1-25, inclusive, are herein referred to as “Meta,” “Facebook,” or “Defendants”
23 interchangeably.

24 13. Meta is a Delaware corporation with substantial business contacts in Menlo Park, in
25 San Mateo County, California. Its corporate headquarters is located in Menlo Park. Meta runs the
26 most popular social media networks around the world, allowing users to connect with other users,
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1 share personal stories and news, and engage in transactions in and outside its platforms. Meta's
2 social media platforms include Facebook, Instagram, Messenger, and WhatsApp.

3 14. Upon information and belief, Meta is governed by a Board of Directors consisting of
4 nine members at present. The members of the Board of Directors were and are, individually and
5 collectively as a body, officers, directors, and managing agents of Meta and Does 1-25, within the
6 meaning of California Code of Civil Procedure section 3294.

7 15. Plaintiff is ignorant of the true names and capacities of the Defendants sued herein
8 as Does 1-25, inclusive, and therefore sues these Defendants by such fictitious names pursuant to
9 California Code of Civil Procedure section 474. Plaintiff will amend this Complaint to allege the true
10 and correct names and capacities of these DOE Defendants if and when ascertained. Plaintiff is
11 informed and believes, and thereon alleges, that said Defendants, and each of them, are responsible
12 in whole or in part for Plaintiff's damages as alleged herein.

13 16. Defendant Does 1-25 are individuals and entities that, upon information and belief,
14 reside in and/or conducted the material transactions and unlawful acts at issue herein.

15 17. Whenever reference is made to any act of Defendants, such allegations shall be
16 deemed to mean that all named Defendants and Does 1 through 25, or their officers, agents,
17 managers, representatives, employees, heirs, assignees, customers and tenants, did or authorized
18 such acts while actively engaged in the operation, management, direction or control of the affairs of
19 Defendants and while acting within the course and scope of their duties.

20 **AGENCY**

21 18. Plaintiff is informed and believes, and on that basis, alleges that at all times herein
22 mentioned each of the Defendants was an agent, manager, director, servant, employee, and/or joint-
23 venturer of each of the remaining Defendants, and were at all times acting within the course and
24 scope of such agency, service, employment, and/or joint venture, and each of the Defendants have
25 ratified, approved, and authorized the acts of each of the remaining Defendants with full knowledge
26 of said facts. In the alternative, Plaintiff alleges that Defendants, and each of them, exceeded the
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1 course and scope of their agency relationship with one another, rendering the agent(s) liable for their
2 own individualized misconduct.

3 **AIDING AND ABETTING/CONSPIRACY**

4 19. Defendants, and each of them, aided and abetted, encouraged, and rendered
5 substantial assistance to the other Defendants in breaching their obligations to Plaintiff, as alleged
6 herein. In taking action, as alleged herein, to aid and abet and substantially assist the commission of
7 these wrongful acts and other wrongdoing complained of, each of the Defendants acted with an
8 awareness of its/ his/her primary wrongdoing and realized that its/his/her conduct would
9 substantially assist the accomplishment of the wrongful conduct, wrongful goals, and wrongdoing.
10 Defendants, and each of them, also knowingly and willfully conspired to do the acts and things
11 herein alleged pursuant to, and in furtherance of, the conspiracy.

12 **ALTER EGO**

13 20. There is a unity of interest between Defendants, and each acts as the alter ego of the
14 other. Additionally, at all times relevant herein, Defendants were joint employers of the Plaintiff, by
15 virtue of sharing authority over and control of the terms and conditions of Plaintiff's employment.

16 21. As a direct and proximate result of Defendants' unlawful acts alleged herein, Plaintiff
17 has suffered and continues to suffer from lost earnings and benefits, out-of-pocket losses, mental
18 and emotional distress, and other damages in amounts to be established at trial and exceeding the
19 jurisdictional minimum of this Court.

20 22. Plaintiff has incurred and continues to incur legal expenses and attorneys' fees to
21 which he is entitled under California law, including but not limited to the PAGA. Plaintiff is
22 presently unaware of the precise amount of these expenses and fees, and he prays leave of court to
23 amend this complaint when the amounts are more fully known.

24 **EXHAUSTION OF ADMINISTRATIVE REMEDIES**

25 23. Prior to filing this action, on March 29, 2022, Plaintiff filed a charge with the DFEH,
26 Matter Number 202203-16546229, alleging the violations of the FEHA as detailed more fully herein.
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1 Plaintiff was asked a single, perfunctory question on one of his interviews: “Are you comfortable
2 seeing sensitive content?” Meta should have properly screened and prepared its potential employees
3 for what they would encounter in the Escalations role so that candidates would be able to make
4 informed decisions about accepting the job. Plaintiff received zero training and zero support while
5 in his role. Further, Meta’s extremely unhealthy culture rendered crucial treatment—such as taking
6 leave or offering any type of remedial measure—unavailable for Plaintiff.

7 30. To maintain a sanitized platform, maximize its already vast profits, and cultivate its
8 public image, Meta relies on people like Plaintiff to view these posts and remove those that violate
9 the company's community guidelines. During the entire course of his employment, Plaintiff
10 witnessed hundreds, if not thousands, of acts of extreme and graphic violence. As Meta content
11 moderators recently alleged in a class action lawsuit against Meta, "You'd go into work at 9 a.m.
12 every morning, turn on your computer and watch someone have their head cut off. Every day, every
13 minute, that's what you would see. Heads being cut off."

14 **Extreme Stress and Resulting Health Issues**

15 31. One particularly troubling example occurred in 2018 when videos of the beheadings
16 of two female hikers in Morocco appeared on Facebook. Since Plaintiff was on-call when it
17 occurred, it fell on him to view the videos and determine Facebook’s response. These images would
18 later replay in Plaintiff’s mind, and he was haunted by the nightmarish images for months.

19 32. Plaintiff gave frequent feedback to his manager about his growing emotional distress
20 during their weekly one on one meetings. Plaintiff’s manager typically responded seemingly with
21 sympathy or by lamenting about her own distress, but she did nothing to address Plaintiff’s own
22 distress, such as offering him time off, offering a transfer to a different role, or suggesting any other
23 accommodations to help Plaintiff manage his mental health.

24 33. The intense stress also exacerbated a back injury that Plaintiff sustained in the
25 military, degenerative disc disease, causing the condition to flare up after he joined Facebook.
26 During that time, it was virtually impossible for Plaintiff to walk without severe pain, and he spent
27 the next six weeks limping around the Facebook office.
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1 34. Plaintiff worked from home when he was able, but he understood that he would
2 miss crucial meetings if he was not physically at the office so his time at home was more limited. His
3 manager did not ask Plaintiff if he needed any accommodations to mitigate his pain or encourage
4 him to take any time off, despite her knowledge that Plaintiff was experiencing significant physical
5 and mental distress. Plaintiff's doctors at Kaiser and the VA told him that the injury was being
6 aggravated by Plaintiff's extreme working conditions.

7 35. In September 2018, Plaintiff's injury required surgical intervention. Plaintiff's
8 surgeon recommended Plaintiff take six weeks off from work following the procedure, but Plaintiff
9 took just two weeks off to recuperate. He was worried that taking more time off would result in a
10 negative performance review because there was low tolerance among the Escalations Team's
11 management regarding time off, and while it may have been allowed, it was known to be detrimental
12 to one's chances for promotion or tenure at the company.

13 ***A New Back-end Protocol Allows Facebook to Access User-Deleted Data***

14 36. In late 2018, Plaintiff attended a meeting where a Facebook manager introduced a
15 new tool to the Escalations team. Unlike other meetings, there were no materials distributed
16 beforehand for attendees to review. This is because, unlike other meetings, Facebook was teaching
17 employees how to utilize a tool that allowed them to circumvent Facebook's normal privacy
18 protocols in order to access user-deleted data. This back-end protocol allowed Plaintiff's team to
19 retrieve data in Messenger that users had chosen to delete. Facebook represented to its users that
20 once data was deleted, it was not stored locally and could not be accessed. Not so.

21 37. Upon information and belief, the protocol went live approximately November or
22 December 2018. Facebook had represented to users for years that once content was deleted by its
23 users, it would not remain on any Facebook servers and would be permanently removed.

24 38. It is true that once a Facebook user deleted data in their accounts, that data was no
25 longer accessible to Facebook through its standard back-end systems. But the new protocol was able
26 to access data purportedly deleted from the Messenger application without using Facebook's
27 standard back-end system. The tool was designed to be a workaround to avoid these rules. In sum,
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1 Facebook could now access data that users intended to be permanently destroyed—such as a user’s
2 entire history of what were thought to be private and deleted messages.

3 39. This was a radical departure from Facebook’s stated data privacy practices. Even
4 worse, there were no safeguards regarding age restrictions, so anyone’s Messenger history could be
5 accessed with the back-end protocol, including children within Messenger for Kids.¹ Upon
6 information and belief, Facebook was at that time—and still is—representing to users that once
7 account information is deleted, Facebook could not access the information. Facebook also makes
8 numerous promises about their heightened protection of children’s data. However, the advent of
9 this back-end protocol meant that these representations were false.

10 40. Plaintiff learned about the back-end protocol during a joint meeting between the
11 California and Austin, Texas Escalations Teams. The protocol was presented by Ashley McHugh,
12 who built the back-end protocol that the team would start utilizing to access deleted user data.

13 ***Plaintiff Blows the Whistle on the Back-End Protocol***

14 41. When Ms. McHugh introduced the back-end protocol, Plaintiff became immediately
15 concerned with the legality of accessing users’ deleted data in Messenger. Plaintiff knew that
16 Facebook had to abide by a 2012 Federal Trade Commission (FTC) Order that prohibited Facebook
17 from engaging in any form of misrepresentation to its users about their ability to control the privacy
18 of their personal information. Plaintiff was also concerned that the back-end protocol violated the
19 European Union’s (EU) recently passed General Data Protection Regulation (GDPR) that, among
20 other things, provides the right to data erasure or the right to be forgotten. Article 17 of the GDPR
21 allows EU citizens to withdraw their consent for a company to use their data. It obligates the
22 controller of that data to erase it if the personal data is no longer necessary for the purpose it was
23 collected or if it is discovered that the data had been unlawfully processed. Plaintiff was further
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27 ¹ Messenger for Kids purported to be a completely different messaging platform that
28 complied with the heightened privacy regulations in the Children’s Online Privacy Protection Act,
but other than some front-end differences, the app was identical to Messenger and data was stored
in the same manner.

1 concerned about other related laws, such as the Children's Online Privacy Protection Act, which
2 protects the data privacy of children.

3 42. Plaintiff immediately questioned the legality of this back-end protocol. He spoke up
4 during the meeting and challenged the legality of the protocol given the privacy and data-use laws
5 governing Facebook. Various levels of management attended the meeting and heard Plaintiff's stated
6 concerns. However, no one responded to Plaintiff's protestations during the meeting; Plaintiff's
7 manager merely glared at Plaintiff after he spoke up. And no one addressed Plaintiff's concern after
8 the meeting. He felt immediately afraid that he should not have spoken up given the outright hostile
9 reception to his comments.

10 43. After its introduction, the back-end protocol was implemented and utilized by
11 Facebook's Global Escalations Team. This is a group of approximately 100 employees responsible
12 for Facebook's response to high visibility inquiries from members of the media and governments
13 about harmful content on the platform. This crisis response team has roles ranging from Specialists
14 to Senior Executives. The internal parties using the back-end protocol were typically the Escalations
15 Specialists. These individuals, Plaintiff being one of them, were required to use the back-end
16 protocol as part of their job duties. The primary goal of this team was to reduce the risk of negative
17 public relations to Facebook and its platforms.

18 44. One example where Plaintiff and his counterparts used the back-end protocol would
19 be when a law enforcement agency would contact the Escalations Team about a suspect they were
20 investigating. Law enforcement would ask questions about the suspect's use of the platform, such as
21 who the suspect was messaging, when messages were sent, and even what those messages contained.
22 To keep Facebook in the good graces of the government, the Escalations Team would utilize the
23 back-end protocol to provide answers for the law enforcement agency and then determine how
24 much to share.

25 **Plaintiff Experiences Unlawful Retaliation**

26 45. Following the meeting where Plaintiff raised concerns about the legality of the back-
27 end protocol, Plaintiff's manager's tone and demeanor changed. In a one-on-one soon after
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1 Plaintiff's whistleblowing, and a week or two prior to his review being released, his manager was
2 colder and not as supportive as she normally had been with him. Plaintiff realized that he was now
3 on shaky ground after having questioned the legality of the new back-end protocol, and he grew
4 increasingly apprehensive about his upcoming performance review. He was fearful that if he pushed
5 the issue further, he would face retaliation up to and including termination.

6 46. In December 2018, Plaintiff's fears of retaliation were realized when he received a
7 "Meets Most" on his performance review, a rating known to be the death knell for one's tenure at
8 Facebook. With this rating, an employee is vulnerable to termination, and it prevents them from
9 seeking lateral moves or promotions. The rationale provided by Plaintiff's manager was that Plaintiff
10 did not ramp up as quickly as others in his role, making no mention of the fact that Plaintiff worked
11 through severe pain from his back injury and hurried back to work four weeks early after surgery to
12 avoid this very consequence. The timing of the poor review left no doubt that Facebook does not
13 tolerate an employee who dares to question the legality of its data collection practices, nor does it
14 tolerate time off for the disabled to recover from a surgery.

15 47. Following Plaintiff's performance review, his stress grew, and he experienced a
16 constant fear of losing his job. Facebook provided little to no training on some of the tools supplied
17 to the Escalations Team, so newer employees lived in fear of using them incorrectly and accidentally
18 violating a policy that Facebook could use to terminate them as pretext. Plaintiff knows of at least
19 two other coworkers who were terminated around this time for the alleged improper use of various
20 tools while in the course and scope of doing their jobs. At least one of these individuals was
21 terminated following their own protected whistleblower activity.

22 48. Following these terminations, Plaintiff learned that some of his coworkers simply
23 refused to use certain tools for fear of making a mistake and giving Facebook the means to justify
24 their termination whenever it deemed it most convenient. Escalations Management provided no
25 guidance or training after these terminations occurred to better train or warn staff members of what
26 the employees did wrong so that others would not suffer a similar fate.

1 49. On June 19, 2019, Plaintiff experienced his second stress-related injury since joining
2 the Escalations Team and was hospitalized with severe abdominal pain and a 100+ degree fever. He
3 was later diagnosed with diverticulitis, a painful constriction of the intestinal system that in younger
4 patients is often triggered by major stress. When Plaintiff returned to work, there was no discussion
5 about reducing his emotional distress or making any sort of adjustment to Plaintiff's role or
6 transferring him to a new role in order to accommodate his injury.

7 50. On July 10, 2019, Plaintiff's worst fear was realized when he was terminated for the
8 alleged improper use of one of Facebook's user admin tools a few months earlier. To wit, Plaintiff's
9 grandmother had reached out to him in a panic in March or April of 2019, after her Facebook page
10 had been hacked. Plaintiff knew Facebook had a protocol for this exact situation, he followed it,
11 avoided investigating the matter himself and created a task for a separate support team to follow up
12 on. Plaintiff followed the team's written protocol and used the same user admin tool that he had
13 used dozens of times each day, in order to confirm that he had the correct email address for his
14 grandmother. By typing her email address into the tool, he could see non-private data like her profile
15 photo and name and was able to confirm the email was correct. But typing his grandmother's email
16 address into the tool was the cited reason for Plaintiff's sudden termination. Plaintiff did not do
17 anything outside normal policy since he used that very tool dozens of times per day.

18 51. Following Plaintiff's termination, he searched for work but remained unemployed
19 for approximately 18 months. He found a new position in the tech industry, but at a lower level and
20 salary.

21 52. Facebook's issuance of the negative performance evaluation, the comments within it,
22 along with Plaintiff's termination, were pretextual. Each was an act of retaliation due to Plaintiff's
23 whistleblowing activity during the back-end protocol meeting, and Plaintiff's health conditions that
24 Facebook would not address, much less accommodate.

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1 57. Plaintiff reported to Defendants what he reasonably believed to be violations of the
2 state and federal law, he refused to participate in activities that violated those laws, and he opposed
3 Defendants' total failure to respond to his concerns. Plaintiff's protected activities are detailed in
4 ¶¶ 36-44, above, and includes, but is not limited to:

- 5 ➤ Plaintiff's disclosure at the meeting where Ms. McHugh introduced the back-end
6 protocol that was intended to be a workaround to Facebook's stated privacy policy,
7 and allow Facebook personnel to search the entire Messenger history of any user,
8 even if the messages had been attempted to be permanently deleted by the user;

9 58. At the time Plaintiff raised his concerns about the back-end protocol, Plaintiff
10 reasonably believed laws had or were being broken. Those laws include, but are not limited to:

- 11 ➤ The 2012 FTC Order requiring Facebook to refrain from making any
12 misrepresentations about the privacy and security of a user's personal information,
13 establish a comprehensive privacy program, remove user information within 30 days
14 after a user deletes their account, obtain a user's express consent before changing
15 how it shares data, and conduct an independent privacy audit every two years;
- 16 ➤ The FTC Act (15 U.S.C. §§ 41-58), which empowers the FTC to go after applications
17 or websites that violate their own privacy policy and investigate violations of
18 marketing language related to privacy;
- 19 ➤ The General Data Protection Regulations (GDPR), in effect starting on May 25,
20 2018, a European Union data protection law that provides more control over one's
21 personal data, including the right to be forgotten, and applies to United States
22 companies if they are control of the personal data of subjects within the European
23 Union (EU); and
- 24 ➤ The Children's Online Privacy Protection Act (15 U.S.C. §§ 6501-6506), protects the
25 privacy of children under the age of 13 by requesting parental consent for the
26 collection or use of any personal information of the users, and includes the right to
27 revoke consent and have information deleted.

1 59. The protected disclosures were made to persons that had authority over Plaintiff and
2 had the authority to make and enforce rules, regulations and policies affecting employees and the
3 terms and conditions of their employment, and to investigate, discover or correct the violations or
4 noncompliance reported by Plaintiff.

5 60. Plaintiff suffered adverse action when Defendants, by and through their agents and
6 employees, which, individually or taken as a whole, materially and adversely affected the terms,
7 conditions and privileges of employment for Plaintiff, including but not limited to the following:

- 8 ➤ Denying Plaintiff's reasonable accommodations;
- 9 ➤ Failing to engage in a timely and good faith discussion and interactive process;
- 10 ➤ Issuing Plaintiff an unwarranted, negative performance evaluation;
- 11 ➤ Terminating Plaintiff's employment.

12 61. As a direct and proximate result of Defendants' actions, Plaintiff suffered and will
13 continue to suffer human harms and losses, including pain, mental suffering, loss of enjoyment of
14 life, inconvenience, grief, anxiety, humiliation, and emotional distress.

15 62. Plaintiff has further suffered and will continue to suffer a loss of earnings and other
16 employment benefits, whereby Plaintiff is entitled to compensatory damages in amounts to be
17 proven at trial.

18 63. Defendants' conduct was a substantial factor in causing Plaintiff's harm.

19 64. Defendants committed the acts and conduct alleged herein by acting knowingly and
20 willfully, with the wrongful and illegal deliberate intention of injuring Plaintiff, from improper
21 motives amounting to malice, and in conscious disregard of Plaintiff's rights. Plaintiff is thus entitled
22 to recover nominal, actual, compensatory, punitive, and exemplary damages in amounts according to
23 proof at time of trial, in addition to any other remedies and damages allowable by law. Defendants,
24 through its officers, managing agents, employees and/or its supervisors, authorized, condoned
25 and/or ratified the unlawful conduct alleged herein. By reason thereof, Plaintiff is entitled to an
26 award of punitive damages in an amount according to proof at the time of trial.

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1 Code section 12926(j), (m). Upon information and belief, Plaintiff's health condition affected his
2 digestive, neurological and musculoskeletal systems, and/or other systems. Further, the
3 aforementioned conditions limited Plaintiff's physical, mental, and social life activities as well as the
4 major life activity of working. This entitles Plaintiff to protection under the FEHA.

5 72. Defendants knew or reasonably should have known of Plaintiff's actual health
6 condition and/or knew that he had a record of health conditions, as defined by the FEHA.
7 Alternatively, Defendants regarded or perceived Plaintiff as having or having had a health condition
8 that currently has no disabling effect but may become an impairment in the future that limits
9 Plaintiff's ability to participate in major life activities.

10 73. At all times relevant, Plaintiff was qualified for and could perform the essential
11 functions of his position with Defendants, with or without reasonable accommodation. At all times
12 relevant to this action, Plaintiff performed his job at least satisfactorily from his date of hire until his
13 termination.

14 74. Plaintiff's health conditions were a substantial motivating factor underlying
15 Defendants' adverse employment actions, including but not limited to:

- 16 ➤ Failing to provide Plaintiff with reasonable accommodations: (i) at any time when
17 Plaintiff was observed limping around Defendants' office with severe back pain for
18 six weeks that was triggered by Plaintiff's extreme stress at work; (ii) following
19 Plaintiff's back surgery when he returned to work four weeks early; (iii) when
20 Plaintiff shared his concerns regarding his increasing stress and its resulting
21 ramifications with his manager during many of their weekly one-on-ones; and (iv)
22 when Plaintiff was hospitalized for diverticulitis, a condition Plaintiff's doctors
23 believed was caused by extreme stress at work where he rushed back to work days
24 later;
- 25 ➤ Failing to engage in a timely and good faith discussion and interactive process;
- 26 ➤ Issuing Plaintiff an unwarranted, negative performance evaluation;
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- Creating an environment where Plaintiff was afraid and intimidated to ask for the most basic accommodations;
- Terminating Plaintiff's employment; and
- Failing to provide coaching or any sort of guidance on how Plaintiff should manage the traumatic content he was required to view in his role, thereby increasing Plaintiff's distress from exposure to extremist violence and obscenity – including videos of beheadings and child rape.

75. The above acts and omissions of Defendants, and each of them, constitute discrimination based on Plaintiff's health conditions, perceived health conditions, or actual or perceived potential health conditions and accordingly violates Government Code section 12940(a) and other provisions of the FEHA.

76. Defendants' conduct violates FEHA, and as a direct, foreseeable, and proximate result of Defendants' willful, knowing, and intentional violation(s) of FEHA and have caused Plaintiff to suffer, and to continue to suffer, injury, including lost wages and benefits, attorneys' fees, costs of suit and other pecuniary loss not presently ascertained, the exact amount of which will be proven at the trial.

77. As a further direct, foreseeable, and proximate legal result of the acts and conduct of Defendants, and each of them, Plaintiff has been caused to and did suffer, and continues to suffer pain, mental suffering, loss of enjoyment of life, inconvenience, grief, anxiety, humiliation, and emotional distress. Plaintiff is entitled to a recovery for said human losses in an amount according to proof at trial.

78. Plaintiff is informed and believes, and thereon alleges, that Defendants, and each of them, by engaging in the aforementioned acts and/or in authorizing and/or ratifying such acts, engaged in willful, malicious, fraudulent, intentional, oppressive, and despicable conduct, and acted with willful and conscious disregard of the rights, welfare and safety of Plaintiff. Defendants, through their officers, agents, supervisors and/or their employees ratified, authorized and/or condoned the unlawful behavior. Defendants knew that the adverse actions taken against Plaintiff,

1 such as his termination, would cause great financial and emotional harm to Plaintiff. By reason
2 thereof, Plaintiff is entitled to an award of punitive and exemplary damages in an amount to be
3 determined at trial.

4 79. By reason of the conduct of Defendants, and each of them, Plaintiff has necessarily
5 retained counsel to prosecute the within action. Plaintiff is therefore entitled to reasonable attorneys'
6 fees and costs of suit as provided in, without limitation, Section 12956(b) of the California
7 Government Code. Additionally, pursuant to Section 12965 of the California Government Code, as
8 a result of Defendants' discrimination, Plaintiff is entitled to recover damages for economic and
9 physical harm, emotional distress, attorneys' fees, costs, and expert witness fees in amounts
10 according to proof at trial.

11 **THIRD CAUSE OF ACTION:**

12 **Failure to Engage in a Good-Faith Interactive Process**

13 **(Cal. Gov't. Code § 12940(n))**

14 **(Against All Defendants)**

15 80. Plaintiff realleges and incorporates the foregoing paragraphs as though fully set forth
16 herein, excepting those allegations that are inconsistent with this cause of action.

17 81. FEHA, at Gov. Code sections 12940(n) and 12926.1(e), requires an employer to
18 engage in a meaningful, good faith, and timely interactive process with its disabled employee to
19 determine a reasonable accommodation with respect to the job, and with respect to the time and
20 manner in which their job functions are to be performed.

21 82. Upon information and belief, at all times relevant, Plaintiff suffered from one or
22 more health conditions or perceived health conditions, physical and mental disabilities, as defined by
23 the FEHA at Section 12926(m). Those health conditions and/or diagnoses included but are not
24 limited to: (i) anxiety; (ii) depression; (iii) degenerative disc disease; and (iv) diverticulitis.

25 83. Plaintiff is a natural person with a health condition, and/or perceived health
26 condition, or actual or perceived potential health condition as defined in California Government
27 Code section 12926(j), (m). Upon information and belief, Plaintiff's health conditions affected
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1 Plaintiff's digestive, neurological, musculoskeletal, and other bodily systems. Further, the
2 aforementioned conditions limited Plaintiff's physical, mental, and social activities and working. This
3 entitles Plaintiff to protection under the FEHA.

4 84. Once Defendant became aware of Plaintiff's actual or perceived need for
5 accommodation, Defendants' obligation to engage in a good faith interactive process with Plaintiff
6 was triggered, requiring Defendants to determine Plaintiff's entitlement to and the availability of
7 reasonable accommodations, including but not limited to the accommodations listed in this
8 complaint. That obligation and duty continued as Plaintiff's needs for further accommodations
9 arose, as his health condition may have changed, and as the perceived hardship or reasonableness of
10 Plaintiff's accommodations changed over time.

11 85. Alternatively, Defendants regarded or perceived Plaintiff as having or having had
12 conditions that currently have no disabling effect but may become an impairment in the future that
13 limits Plaintiff's ability to participate in major life activities.

14 86. Plaintiff is informed and believes, and thereon alleges, that Defendants, and each of
15 them, were aware of Plaintiff's health conditions, perceived health conditions, and/or perceived or
16 actual potential health conditions. Accordingly, Defendants, and each of them, had an affirmative
17 duty pursuant to California Government Code section 12940(m) to accommodate Plaintiff.
18 Defendants failed to engage in a good-faith interactive process with Plaintiff as required by
19 California Government Code section 12940(n) to determine a reasonable accommodation.

20 87. Plaintiff performed his job successfully, despite his disabilities. Rather than engaging
21 in any meaningful interactive process, Defendants gave Plaintiff a negative performance evaluation
22 and eventually terminated him. Further, Defendants failed to inquire with Plaintiff about whether
23 accommodations would allow him to thrive at Facebook more fully. Defendants failed to inform
24 Plaintiff of their concerns about his work capacity. In doing so, Defendants failed in their duty to
25 interact with Plaintiff in good faith to reasonably accommodate Plaintiff's health condition, even
26 though his health condition could have been readily accommodated.

1 88. At all times relevant, Plaintiff was qualified for and could perform the essential
2 functions of his position with Defendants, with or without reasonable accommodation.

3 89. Plaintiff's disabilities were a substantial motivating factor underlying Defendants'
4 adverse employment actions, including but not limited to: failing to engage in an interactive process;
5 failing to accommodate his health conditions; artificially reducing his performance evaluation ratings;
6 and terminating his employment.

7 90. The above acts and omissions of Defendants, and each of them, constitute
8 discrimination based on Plaintiff's health conditions, perceived health conditions, or actual or
9 perceived potential health conditions and accordingly violates Government Code section 12940(n)
10 and other provisions of the FEHA.

11 91. Defendants' actions and conduct violates FEHA, and as a direct, foreseeable, and
12 proximate result of Defendant's conduct, Plaintiff has suffered, and continues to suffer, injury,
13 including lost wages and benefits, attorneys' fees, costs of suit and other pecuniary loss not presently
14 ascertained, the exact amount of which will be proved at the trial.

15 92. As a further direct, foreseeable, and proximate legal result of the acts and conduct of
16 Defendants, and each of them, Plaintiff has been caused to and did suffer, and continues to suffer
17 pain, mental suffering, loss of enjoyment of life, inconvenience, grief, anxiety, humiliation, and
18 emotional distress. Plaintiff is entitled to a recovery for said human losses in an amount according
19 to proof at trial.

20 93. Plaintiff is informed and believes, and thereon alleges, that Defendants, and each of
21 them, by engaging in the aforementioned acts and/or in authorizing and/or ratifying such acts,
22 engaged in willful, malicious, fraudulent, intentional, oppressive and despicable conduct, and acted
23 with willful and conscious disregard of the rights, welfare and safety of Plaintiff. Defendants,
24 through their officers, agents, supervisors and/or their employees ratified, authorized and/or
25 condoned the unlawful behavior. Defendants knew that Plaintiff's termination would cause great
26 financial and emotional harm to Plaintiff. By reason thereof, Plaintiff is entitled to an award of
27 punitive and exemplary damages in an amount to be determined at trial.
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1 99. Plaintiff is a natural person with health conditions, and/or perceived health
2 conditions, or actual or perceived potential health condition as defined in California Government
3 Code section 12926(j),(m). Upon information and belief, Plaintiff's health conditions affected
4 Plaintiff's digestive, neurological and musculoskeletal, and other bodily systems. Further, the
5 aforementioned conditions limited Plaintiff's physical, mental, and social activities and working. This
6 entitles Plaintiff to protection under the FEHA.

7 100. Defendants perceived that Plaintiff suffered from a health condition as defined by
8 the FEHA. Alternatively, Defendants regarded or perceived Plaintiff as having or having had a
9 condition that currently has no disabling effect but may become an impairment in the future that
10 limits Plaintiff's ability to participate in major life activities.

11 101. It is unlawful for an employer to fail to provide a reasonable accommodation to an
12 employee with a known health condition if that accommodation does not cause the employer undue
13 hardship. (Cal. Govt. Code § 12940(m).) Defendants, and each of them, violated the FEHA by,
14 among other things, failing to provide any reasonable accommodations for Plaintiff's physical or
15 mental health conditions, perceived health conditions, or actual or perceived potential health
16 conditions. Nevertheless, Plaintiff performed his job successfully and his termination was not
17 justifiable.

18 102. On information and belief, had Defendants engaged in a good-faith interactive
19 process with Plaintiff and determined what reasonable accommodations were needed for Plaintiff to
20 continue to perform the essential functions of his job, the following reasonable accommodations
21 would have included, but would not have been limited, to:

- 22 ➤ Permitting Plaintiff to take a leave of absence so that he could fully recuperate from
23 his stress-induced degenerative disc disease and the resulting severe back pain, back
24 surgery, or hospitalization for diverticulitis and attend follow up medical
25 appointments, or the mental distress incurred from having to repeatedly view
26 traumatic content on Facebook or its platforms;

- Allowing Plaintiff to use accrued sick time and/or paid time off to care for any health conditions without fear of or actual retribution;
- Delegating and assigning work tasks among other employees, including but not limited to Plaintiff's teammates on the Escalations Team, in the event a job or task was too demanding for Plaintiff to perform;
- Allowing Plaintiff to work from home without fear of or actual retribution in order to put less strain on Plaintiff's back;
- Providing Plaintiff with proper training and guidance on how to process the extreme violence and obscenity he had to routinely view in his role;
- Placing Plaintiff on a leave of absence to allow for an extended interactive process, and/or to allow for additional employment vacancies to open up so as to allow for one or more reassignment accommodations;
- Transferring Plaintiff to a vacant position that would have accommodated him and for which he was otherwise qualified;
- Providing appropriate breaks, counseling, and other support services necessary to cope with the stress of the position;
- Consulting with appropriate experts to determine any other accommodations that would have permitted employees in Plaintiff's role to perform the essential functions of the position without undue hardship.

103. Plaintiff will identify other reasonable accommodations that would have been available to Plaintiff up to and including the time of trial.

104. On information and belief, if Defendants engaged in a good-faith interactive process with Plaintiff and still determined that no reasonable accommodations were available for Plaintiff's current position, a reassignment accommodation would have readily been available to a qualified individual such as Plaintiff.

105. At the time of Plaintiff's termination, Facebook had other vacant and funded positions at the same level. On information and belief, Plaintiff was qualified for those positions,

1 including but not limited to roles with the Content Policy team in Menlo Park. Plaintiff received
2 positive feedback from members of the Content Policy team about his performance and received an
3 encouraging response when he was networking with members of that team. Plaintiff had his eye on
4 several roles within the team and had been working to make connections in order to facilitate an
5 eventual transfer to alleviate his ongoing distress. Plaintiff would have been qualified to work on the
6 team as Associate Manager, Content Policy or Product Policy.

7
8 106. At all times relevant, Plaintiff was qualified for and could perform the essential
9 functions of his position with Defendants, with or without reasonable accommodation.

10 107. Defendants' failure to provide reasonable accommodation for Plaintiff's known
11 health condition was in violation of FEHA, Government Code section 12940(m).

12 108. Plaintiff's disabilities were a substantial motivating factor underlying Defendants'
13 adverse employment actions, including but not limited to failing to engage in an interactive process,
14 failing to accommodate his health condition, artificially reducing his performance evaluation ratings,
15 and terminating Plaintiff.

16 109. The above acts and omissions of Defendants, and each of them, constitute
17 discrimination based on Plaintiff's health conditions, perceived health conditions, or actual or
18 perceived potential health conditions and accordingly violates Government Code section 12940(m)
19 and other provisions of the FEHA.

20 110. Defendants' conduct violates FEHA, and as a direct, foreseeable, and proximate
21 result of Defendants' conduct, including its willful, knowing, and intentional violation(s) of FEHA,
22 has caused Plaintiff to suffer, and to continue to suffer, injury, including lost wages and benefits,
23 attorneys' fees, costs of suit and other pecuniary loss not presently ascertained, the exact amount of
24 which will be proved at the trial.

25 111. As a further direct, foreseeable, and proximate legal result of the acts and conduct of
26 Defendants, and each of them, Plaintiff has been caused to and did suffer, and continues to suffer
27 pain, mental suffering, loss of enjoyment of life, inconvenience, grief, anxiety, humiliation, and
28

1 emotional distress. Plaintiff is entitled to a recovery for said human losses in an amount according
2 to proof at trial.

3 112. Plaintiff is informed and believes, and thereon alleges, that Defendants, and each of
4 them, by engaging in the aforementioned acts and/or in authorizing and/or ratifying such acts,
5 engaged in willful, malicious, fraudulent, intentional, oppressive and despicable conduct, and acted
6 with willful and conscious disregard of the rights, welfare and safety of Plaintiff. Defendants,
7 through their officers, agents, supervisors and/or their employees ratified, authorized and/or
8 condoned the unlawful behavior. Defendants knew that Plaintiff's termination would cause great
9 financial and emotional harm to Plaintiff. By reason thereof, Plaintiff is entitled to an award of
10 punitive and exemplary damages in an amount to be determined at trial.

11 113. By reason of the conduct of Defendants, and each of them, Plaintiff has necessarily
12 retained counsel to prosecute the within action. Plaintiff is therefore entitled to reasonable attorneys'
13 fees and costs of suit as provided in, without limitation, Section 12956(b) of the California
14 Government Code. Additionally, pursuant to Section 12965 of the California Government Code, as
15 a result of Defendants' discrimination, Plaintiff is entitled to recover damages for economic and
16 physical harm, emotional distress, attorneys' fees, costs, and expert witness fees in amounts
17 according to proof at trial.

18 **FIFTH CAUSE OF ACTION:**

19 **Failure to Prevent Discrimination**

20 **(Cal. Gov't. Code § 12940(k))**

21 **(Against All Defendants)**

22 114. Plaintiff realleges and incorporates the foregoing paragraphs as though fully set forth
23 herein, excepting those allegations that are inconsistent with this cause of action.

24 115. Employers have an affirmative duty to take reasonable steps to prevent and promptly
25 correct discriminatory, retaliatory and harassing conduct. (Gov. Code, § 12940(k).)

26 116. Further, employers have an affirmative duty to create a workplace environment that
27 is free from employment practices prohibited by the FEHA. In addition to distributing the
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1 Department's DFEH-185 brochure on sexual harassment, or an alternative writing that complies
2 with Government Code section 12950, an employer must develop a harassment, discrimination, and
3 retaliation prevention policy that:

- 4 ➤ Is in writing;
- 5 ➤ Lists all current protected categories covered under the FEHA;
- 6 ➤ Indicates that the law prohibits coworkers and third parties, as well as supervisors
7 and managers with whom the employee comes into contact, from engaging in
8 conduct prohibited by the FEHA;
- 9 ➤ Creates a complaint process to ensure that complaints receive:
 - 10 i. an employer's designation of confidentiality, to the extent possible;
 - 11 ii. a timely response;
 - 12 iii. impartial and timely investigations by qualified personnel;
 - 13 iv. documentation and tracking for reasonable progress;
 - 14 v. appropriate options for remedial actions and resolutions; and
 - 15 vi. timely closures.
- 16 ➤ Provides a complaint mechanism that does not require an employee to complain
17 directly to his or her immediate supervisor, including, but not limited to, the
18 following:
 - 19 i. direct communication, either orally or in writing, with a designated company
20 representative, such as a human resources manager, EEO officer, or other
21 supervisor; and/or
 - 22 ii. a complaint hotline; and/or
 - 23 iii. access to an ombudsperson; and/or
 - 24 iv. identification of the Department and the U.S. Equal Employment Opportunity
25 Commission (EEOC) as additional avenues for employees to lodge complaints.

- Instructs supervisors to report any complaints of misconduct to a designated company representative, such as a human resources manager, so the company can try to resolve the claim internally;
- Indicates that when an employer receives allegations of misconduct, it will conduct a fair, timely, and thorough investigation that provides all parties appropriate due process and reaches reasonable conclusions based on the evidence collected;
- States that confidentiality will be kept by the employer to the extent possible, but not indicate that the investigation will be completely confidential;
- Indicates that if at the end of the investigation misconduct is found, appropriate remedial measures shall be taken; and
- Makes clear that employees shall not be exposed to retaliation as a result of lodging a complaint or participating in any workplace investigation.

117. Dissemination of the policy must include one or more of the following methods:

- Printing and providing a copy to all employees with an acknowledgment form for the employee to sign and return;
- Sending the policy via e-mail with an acknowledgment return form;
- Posting current versions of the policies on a company intranet with a tracking system ensuring all employees have read and acknowledged receipt of the policies;
- Discussing policies upon hire and/or during a new hire orientation session; and/or
- Any other way that ensures employees receive and understand the policies.

118. Any employer whose workforce at any facility or establishment contains 10 percent or more of persons who speak a language other than English as their spoken language shall translate the retaliation/discrimination policy into every language that is spoken by at least 10 percent of the workforce.

119. Defendants knew or should have known of the discrimination occurring on the basis of Plaintiff's health conditions, perceived health conditions, or perceived or actual potential health condition.

1 120. In engaging in the conduct described above, Defendants failed to engage in any
2 reasonable steps to prevent health condition discrimination from occurring in the workplace.
3 Defendants, and each of them, failed to provide Plaintiff a reasonable accommodation and failed to
4 engage in the interactive process. This ultimately resulted in Plaintiff's unlawful termination.
5 Moreover, Plaintiff is informed and believes, and thereupon alleges, that Defendants failed to
6 comply with the requirements set forth in ¶¶ 115-118, above.

7 121. These failures by Defendants, and each of them, constituted unlawful employment
8 discrimination, and the failure to prevent that discrimination was a substantial factor in causing
9 damage and injury to Plaintiff.

10 122. As a foreseeable, direct and proximate result of Defendant's acts and omissions of
11 Defendants, and each of them, caused Plaintiff to suffer, and to continue to suffer, injury, including
12 lost wages and benefits, attorneys' fees, costs of suit and other pecuniary loss not presently
13 ascertained, the exact amount of which will be proved at the trial.

14 123. As a further foreseeable, direct, and proximate legal result of the acts and conduct of
15 Defendants, and each of them, Plaintiff has been caused to and did suffer, and continues to suffer
16 pain, mental suffering, loss of enjoyment of life, inconvenience, grief, anxiety, humiliation, and
17 emotional distress. Plaintiff is entitled to a recovery for said human losses in an amount according
18 to proof at trial.

19 124. Plaintiff is informed and believes, and thereon alleges, that Defendants, and each of
20 them, by engaging in the aforementioned acts and/or in authorizing and/or ratifying such acts,
21 engaged in willful, malicious, fraudulent, intentional, oppressive and despicable conduct, and acted
22 with willful and conscious disregard of the rights, welfare and safety of Plaintiff. Defendants,
23 through their officers, agents, supervisors and/or their employees ratified, authorized and/or
24 condoned the unlawful behavior. Defendants knew that Plaintiff's termination would cause great
25 financial and emotional harm to Plaintiff. By reason thereof, Plaintiff is entitled to an award of
26 punitive and exemplary damages in an amount to be determined at trial.
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- 1 7. For such other, further, and equitable relief, including potential front pay for a
2 reasonable period in lieu of reinstatement, as the court deems just and proper under the
3 circumstances; and
4 8. For such other and further relief as the Court may deem proper.

5 **DEMAND FOR JURY TRIAL**

6 Plaintiff hereby demands a trial by jury on every cause of action for which he has a right
7 thereto.

8
9 Dated: 07/05/2022

10 Respectfully Submitted,

11 

12 _____
13 Dustin L. Collier
14 V. Joshua Socks
15 Elizabeth R. Malay
16 Attorneys for Plaintiff
17 BRENNAN LAWSON
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