

1 ADAM REISNER, ESQ., (State Bar No. 204351)
 2 TESSA KING, ESQ., (State Bar No. 251408)
 3 NIRAN GRIMBERG, ESQ., (State Bar No. 327205)
REISNER & KING LLP
 4 15303 Ventura Blvd., Suite 1260
 5 Sherman Oaks, California 91403
 Phone: (818) 981-0901
 Fax: (818) 981-0902
 Attorneys for PLAINTIFF **JESS REYNOLDS**

6 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
 7 **FOR THE COUNTY OF LOS ANGELES**

8)
 9 JESS REYNOLDS,)

10 Plaintiff,)

11 vs.)

12 LOS ANGELES COUNTY)
 13 METROPOLITAN TRANSPORTATION)
 14 AUTHORITY;)
 15 BRIAN BERGQUIST, an individual; and)
 16 DOES 1 through 100,)

17 Defendants.)

Case No.: **20STCV24819**

COMPLAINT FOR DAMAGES:

- 18) **(1) SEX/GENDER HARASSMENT,**
- 19) **VIOLETION OF CAL. GOV. CODE**
- 20) **§§ 12940 ET SEQ.;**
- 21) **(2) SEX/GENDER DISCRIMINATION,**
- 22) **VIOLETION OF CAL. GOV. CODE**
- 23) **§§ 12940 ET SEQ.;**
- 24) **(3) SEX/GENDER RETALIATION,**
- 25) **VIOLETION OF CAL. GOV. CODE §§**
- 26) **12940 ET SEQ.;**
- 27) **(4) ACTUAL/PERCEIVED DISABILITY**
- 28) **HARASSMENT, VIOLATION OF**
-) **CAL. GOV. CODE §§ 12940 ET SEQ.;**
-) **(5) ACTUAL/PERCEIVED DISABILITY**
-) **DISCRIMINATION, VIOLATION OF**
-) **CAL. GOV. CODE §§ 12940 ET SEQ.;**
-) **(6) ACTUAL/PERCEIVED DISABILITY**
-) **RETALIATION, VIOLATION OF**
-) **CAL. GOV. CODE §§ 12940 ET SEQ.;**
-) **(7) WHISTLEBLOWER VIOLATIONS,**
-) **CAL. LABOR CODE § 1102.5;**
-) **(8) INTENTIONAL INFLICTION OF**
-) **EMOTIONAL DISTRESS.**

) **JURY TRIAL DEMANDED**

1 COMES NOW PLAINTIFF JESS REYNOLDS (hereinafter referred to as “Reynolds” or
2 “Plaintiff”) and complains against the above-named Defendants and for causes of action against
3 the Defendants, and each of them, as follows:

4 I.

5 **FIRST CAUSE OF ACTION**

6 **For Sex/Gender/Gender Identity or Expression/Transgender/Sexual Orientation**

7 **Harassment in Employment**

8 **[California Government Code §§ 12940 et seq.]**

9 **Against Defendants LACMTA and Brian Bergquist, & DOES 1 Through 100, Only**

10 1. At all times mentioned herein, Plaintiff was, and now is, an individual domiciled in the
11 County of Los Angeles, State of California.

12 2. Plaintiff is informed and believes, and thereon alleges that at all times relevant herein,
13 Defendant LOS ANGELES METROPOLITAN TRANSPORTATION AUTHORITY
14 (“LACMTA”) was, and now is, a valid businesses and/or government entities and/or a political
15 subdivisions thereof of form unknown duly organized and existing under the laws of the State of
16 California, having their principal places of business in the County of Los Angeles, State of
17 California. At all times relevant to this action, LACMTA was an employer of Plaintiff.

18 3. Plaintiff is informed and believes, and thereon alleges that at all times relevant herein,,
19 Defendant BRIAN BERGQUIST (hereinafter “Bergquist” and collectively with all other
20 Defendants as “Defendants”), was, and now is, an individual domiciled in the County of Los
21 Angeles, and was a Manager, Officer, Shareholder, Director, Supervisor, Manager, Managing
22 Agent, Owner, Principal, and/or Employee of LACMTA and DOES 1 through 100, and each of
23 them.

24 4. Plaintiff is informed and believes, and thereon alleges that at all times relevant herein,,
25 Defendant JOSEPH CABORNIDA (hereinafter “Cabornida” and collectively with all other
26 Defendants as “Defendants”), was, and now is, an individual domiciled in the County of Los
27 Angeles, and was a Manager, Officer, Shareholder, Director, Supervisor, Manager, Managing
28

1 Agent, Owner, Principal, and/or Employee of LACMTA and DOES 1 through 100, and each of
2 them.

3 5. Plaintiff is ignorant of the true names and capacities, whether corporate, associate,
4 individual, or otherwise, of Defendants sued herein as DOES 1 - 100, inclusive, and therefore
5 sues said Defendants by such fictitious names. Plaintiff will seek leave of Court to amend this
6 Complaint to assert the true names and capacities of the fictitiously named Defendants when the
7 same have been ascertained. Plaintiff is informed and believes, and thereon alleges, that each
8 Defendant designated as "DOES" herein is legally responsible for the events, happenings, acts,
9 occurrences, indebtedness, damages and liabilities hereinafter alleged and caused injuries and
10 damages proximately thereby to the Plaintiff, as hereinafter alleged.

11 6. Plaintiff is informed and believes and thereon alleges that each of the Defendants named
12 herein has, at all times relevant to this action, been the officer, agent, employee and/or
13 representative of the remaining Defendants and has acted within the course and scope of such
14 agency and employment, and with the permission and consent of the co-defendants.

15 7. Plaintiff was an employee of Defendant LACMTA for approximately five years
16 beginning in or around July 2015 as a Signal Inspector, working his way up to Relief Lead.

17 8. At all times relevant herein, has been an employee disabled by a severe and debilitating
18 disability, including anxiety and depression, among other related conditions and/or disabilities,
19 Plaintiff is a member of a protected class pursuant to the Fair Employment & Housing Act.

20 9. At all times relevant herein, Plaintiff has been an actual, perceived, and/or potentially
21 disabled person within the meaning of Cal. Gov. Code §§ 12926.1(b) et seq., because Plaintiff
22 was a person with an actual, perceived, potentially disabling, and/or potentially disabling in the
23 future physical/mental disability(s) including, but not limited to: anxiety and depression, among
24 other related conditions and/or disabilities.

25 10. At all times relevant herein, Plaintiff was able to perform the essential functions of
26 Plaintiff's job either with and/or without reasonable accommodations.

27 11. On a severe and/or pervasive basis during Plaintiff's employment with Defendant
28 LACMTA continuing through at least July 1, 2020, and continuing, Defendants LACMTA and

1 Bergquist, and DOES 1 through 100, and each of them, harassed Plaintiff due to and
2 substantially motivated by Plaintiff's sex/gender, transgender, gender identity or expression, and
3 sexual orientation, and subjected Plaintiff to a hostile work environment through the following
4 actions, among others on a severe and/or pervasive basis:

5 a) In or around January 2016, Plaintiff informed LACMTA's EEO department –
6 specifically, Jonaura Wisdom – that he is transgender and identifies as male.

7 b) Shortly thereafter, Defendant LACMTA held a meeting with its employees in
8 which it purposely intimidated its employees from asking questions regarding Plaintiff's
9 gender identity, creating a situation in which everyone knew Plaintiff was transgender but
10 treated him differently because they were afraid to say the wrong thing.

11 c) In or around June 2016, in an effort to intimidate Plaintiff due in substantial part
12 to his sex/gender, Defendant Bergquist commented about another employee, Cynthia
13 Rivera, an employee of which it is common knowledge within the department that is not
14 heterosexual, "If I had a chance, I would be happy to push [co-worker] Cynthia Rivera in
15 front of a high rail vehicle."

16 d) Critically, Ms. Rivera had a gender nonconforming appearance, thereby directly
17 evidencing Defendant Bergquist's discriminatory animus towards homosexual and/or
18 transgender or gender nonconforming individuals. Additionally, Ms. Rivera had been
19 open about having a variety of gender nonconforming interests.

20 e) In or around July 2016, in response to witnessing Defendant Bergquist's violent
21 comments, Plaintiff lodged a formal written complaint with Department Manager
22 Ricardo Moran.

23 f) However, Department Manager Moran took no remedial or disciplinary action
24 towards Defendant Bergquist's harassing comments and therefore, Defendant LACMTA,
25 through its Department Manager, ratified and condoned Mr. Bergquist's unlawful
26 conduct.

27 g) In or around August or September 2016, Plaintiff and his co-worker, Lawrence
28 Lee were assigned to be trained by Defendant Bergquist at Union Station.

1 i. Defendant Bergquist took care to slowly walk Mr. Lee through the
2 training, making sure to thoroughly explain everything to him and ensure Mr. Lee
3 had an understanding of what was supposed to be done.

4 ii. When it came to Plaintiff’ part of the training, Defendant Bergquist simply
5 left Plaintiff’s presence with Mr. Lee to discuss blueprints, knowing that Plaintiff
6 had no knowledge of how to perform the tasks he was supposed to, since
7 Defendant Bergquist was supposed to be training him on said tasks.

8 iii. Rather, when Plaintiff approached Defendant Bergquist for assistance, Mr.
9 Bergquist began yelling at and insulting Plaintiff in front of his co-worker, in an
10 effort to belittle Plaintiff, based in substantial part on his sex/gender, transgender.

11 h) Indeed, Defendant Bergquist went out of his way to continually harass Plaintiff on
12 a severe and/or pervasive basis.

13 i) For instance, Lawrence Lee was given his own truck, while Plaintiff was
14 purposely placed with another worker, who had seniority and clearly should have been
15 given his own truck instead of Mr. Lee.

16 j) Due to the severe and/or pervasive harassment that Plaintiff was facing from
17 Defendant Bergquist, Plaintiff complained to Defendant Joseph Cabornida.

18 k) Plaintiff informed Defendant Cabornida of the severe and/or pervasive unlawful
19 conduct and comments he was facing from Defendant Bergquist, of which Defendant
20 Cabornida admitted he had been aware.

21 l) For instance, Lawrence Lee stated to Plaintiff, “You are going to be stuck with
22 [Supervisor Bergquist] forever,” laughing.

23 m) In fact, rather than stop the harassment, Defendant Cabornida stated to Plaintiff,
24 “My only responsibility is to manage work, not interpersonal relationships, and
25 [Defendant Bergquist] is not violating any policies.”

26 n) However, this was untrue, as Defendant LACMTA has a claimed anti-harassment
27 and anti-bullying policy, which was clearly being violated, as evidenced by Defendant
28 Cabornida’s aforesaid admission.

1 o) As such, Defendant LACMTA was put on notice of FEHA and other policy
2 violations, and ratified and condoned the unlawful harassment, discrimination, and
3 retaliation that Plaintiff was facing due in substantial part to his sex/gender, transgender,
4 gender identity or expression, sexual orientation, and related complaints thereto.

5 p) In or around late 2016, Defendant Bergquist began refusing to tell Plaintiff and
6 Cynthia Rivera what their assignments were but would tell all the other employees under
7 him what their assignments were.

8 q) This forced Plaintiff to have to ask around to simply find out what he was
9 supposed to do.

10 r) In addition, Lawrence Lee would not show up for job assignments but would
11 never face disciplinary action, while Plaintiff regularly faced scrutiny and being overly
12 monitored as a biased personnel management decision on a severe and/or pervasive basis.

13 s) In or around February 2017, Plaintiff was working on an independent capital
14 improvement project under the direction of Manager Gary Ambrozich.

15 t) Defendant Bergquist went out of his way to go to the location where Plaintiff was
16 working, and as a biased personnel management decision, scrutinize and monitor his
17 work, and subsequently tell Manager Ambrozich that Plaintiff did something wrong in
18 order to further harass Plaintiff, even though Defendant Bergquist was not Plaintiff's
19 direct supervisor at that time.

20 u) Defendant Bergquist's biased personnel management decision to not address the
21 issue he found and to circumvent Plaintiff to go directly to Manager Ambrozich is direct
22 evidence of Defendant Bergquist's harassment.

23 v) In or around July 2018, Plaintiff was forced to take a medical leave of absence
24 due to major depression, which he had been previously been diagnosed with, and which
25 Defendant LACMTA was on notice of per an email from Plaintiff to Manager
26 Ambrozich.

27 w) In or around June 2019, Plaintiff returned from his leave and was placed on a shift
28 in which his direct supervisor was Defendant Lead Bergquist.

1 x) Upon Plaintiff's return, he experienced the same unlawful and harassing conduct
2 on account of his sex/gender, transgender, gender identity or expression, and/or sexual
3 orientation.

4 y) For instance, Defendant Bergquist referred to Cynthia Rivera as "Mini Rambo,"
5 in direct reference to her gender nonconforming appearance. Defendant Bergquist
6 purposefully made this comment in the presence of Plaintiff in order to harass, having
7 known that Plaintiff is a transgender individual.

8 z) In fact, Defendant Bergquist came to Plaintiff's shared workspace on a severe
9 and/or pervasive basis, where Defendant Bergquist did not work, and made comments
10 regarding females, such as one directed towards Heavy Rail Inspector Esther Ang, "I was
11 worried she was going to come to Third Shift but I guess she doesn't want to work, so
12 she stayed on Second Shift."

13 aa) Defendant Bergquist made this and other gender-charged comments in order to
14 harass and intimidate Plaintiff. Defendant Bergquist going out of his way to come to an
15 area where he did not work in order to make gender-charged comments in the presence of
16 Plaintiff is yet more evidence of his harassment.

17 bb) On or about June 20, 2019, Plaintiff was called into a Project Briefing meeting
18 with Defendant Bergquist and Supervisor Moses Jones in which Defendant Bergquist
19 was told to discuss the details of his current project with Plaintiff, give him copies of
20 prints, take Plaintiff for an on-site walkthrough, among other things.

21 cc) The very next day, on or about June 21, 2019, Plaintiff noticed that Defendant
22 Bergquist had, as a biased personnel management decision, assigned himself and another
23 employee, Tuan Nguyen, to work on what Plaintiff was supposed to work on and
24 assigned Plaintiff elsewhere.

25 dd) Plaintiff then directly asked Defendant Bergquist whether he had any plans to
26 follow Supervisor Jones' instructions to brief him on the project, to which Defendant
27 Bergquist responded that Plaintiff could go look at the room in question on his own if he
28 wanted to.

1 ee) As a result, Plaintiff emailed Manager Ambrozich and Supervisor Jones,
2 protesting and asking to be relieved of responsibility for the project and detailed why,
3 including his fear of worsening harassment by Lead Shift Bergquist.

4 ff) Moreover, on or about June 22, 2019, contrary to Plaintiff's request and without
5 supervision talking to him beforehand, Plaintiff was forced into another project briefing
6 meeting with Moses Jones, Joseph Cabornida, Brian Bergquist, Tuan Nguyen, and Mai
7 Cowart.

8 gg) Supervisor Jones reiterated that he wanted Defendant Bergquist to share the
9 previously requested information with Plaintiff, at which point Plaintiff informed
10 Defendant Bergquist he had requested to be excused from the project completely.
11 Supervisor Jones thereafter left rapidly, stating that it was a "Third shift issue," so it was
12 not his responsibility.

13 hh) To wit, Plaintiff explained that he was not interested in trying to force Defendant
14 Bergquist to collaborate with him when he has a track record of clearly not being
15 interested in doing so.

16 ii) In response, Defendant Bergquist brought up Plaintiff having reported him for his
17 comments regarding Cynthia Rivera in 2016, explicitly admitting his retaliatory animus
18 against Plaintiff from 2016 to 2019 for having complained regarding his unlawful
19 comments, which violated both the FEHA and LACMTA policy. Egregiously, this
20 comment was made in the presence of Manager Cabornida, to which there was no
21 reaction and against which no remedial or disciplinary action was taken.

22 jj) Despite Defendant Bergquist's astonishing admission that he had been retaliating
23 against and harassing Plaintiff for three years, Defendant Cabornida proceeded to tell
24 Plaintiff that it was *his* attitude, *not* Defendant's Bergquist's behavior, that was causing
25 Plaintiff's problems, and that discussing the problem and/or seeking help was, in his
26 opinion, unprofessional.

1 kk) Further, Mr. Cabornida referred to the original complaint that Plaintiff filed in
2 2016 as “what [he] did to [Defendant Bergquist],” and stated that Plaintiff is making a
3 power grab to “get [his] way.”

4 ll) Defendant Cabornida finished the meeting by stating to Plaintiff that Defendant
5 Bergquist was in charge, and that as long as he did not tell Plaintiff to do something
6 unsafe, that Plaintiff *had to* do whatever Defendant Bergquist told him to do.

7 mm) On or about August 7, 2019, Plaintiff was called into a meeting in order to resolve
8 the ongoing issues with Defendant Bergquist. Present at this meeting were Defendant
9 Cabornida, Manager Ambrozich, and Director Moran.

10 nn) Once again, Defendant Bergquist berated Plaintiff and told him *in front of three*
11 *different levels of management*, “If you don’t like the way you are being treated,
12 unemployment is very low, and you should go find another job.” All three levels of
13 supervisors sat by and watched and did nothing to remediate the unlawful harassment of
14 Plaintiff, thereby ratifying and condoning Defendant Bergquist’s conduct.

15 oo) On or about November 15, 2019, while working at the Westlake Station, Plaintiff
16 realized he had forgotten some equipment and asked Defendant Bergquist whether he had
17 the equipment, to which Defendant Bergquist stated he did not, forcing Plaintiff to go
18 retrieve the equipment.

19 pp) However, upon Plaintiff’s return, Defendant Bergquist disclosed that *there was*
20 *actually no work that needed to be done by Plaintiff on the rail*, meaning he had forced
21 Plaintiff to go back and forth for no reason except to harass Plaintiff.

22 qq) Towards the end of November 2019, Plaintiff managed to bid onto on a different
23 shift, which would mean he would be away from Defendant Bergquist for at least six
24 months. Subsequently, during the department’s job briefing, Defendant Cabornida began
25 criticizing the employees, including Plaintiff, for being behind on relay testing.

26 rr) In response, Plaintiff explained that they were behind because they had not been
27 properly trained, at which point Defendant Bergquist shouted, “I am not going to listen to
28

1 this individual,” a direct reference to Plaintiff’s transgender status and directly evidencing
2 his discriminatory animus.

3 ss) At that point, Plaintiff disclosed that he was changing shifts, to which Defendant
4 Bergquist responded sarcastically, “I heard about the good news,” and attempting to
5 shake Plaintiff’ hand in an effort to physically intimidate him.

6 tt) Ultimately, due to the hostile work environment Plaintiff faced since his hiring by
7 LACMTA, Plaintiff pursued a Workers’ Compensation claim.

8 uu) However, despite LACMTA’s knowledge of Plaintiff’s status as transgender,
9 LACMTA sent him to a therapist whose office was located in a conversion therapy clinic.

10 vv) Even worse, an entire wall of the waiting room where Plaintiff was left alone to
11 complete paperwork for over two hours prior to being seen was decorated with framed
12 book covers referencing the evils of homosexuality and promoting so-called “reparative
13 therapy.”

14 ww) When Plaintiff went into his evaluation, the doctor he spoke to, obviously having
15 knowledge that Plaintiff is transgender, inquired and/or commented about the following:

- 16 i. About Plaintiff’ plans (or lack thereof) for genital surgery;
- 17 ii. Expressed skepticism regarding the number of trans people today as
18 opposed to 30 years ago;
- 19 iii. Asked what Plaintiff name was previously;
- 20 iv. Asked which gender(s) Plaintiff was attracted to; and
- 21 v. Spoke about Dr. John Money as a respected researcher (Money claimed
22 that gender identity is primarily learned, not innate).

23 xx) Lastly, the scheduling letter for Plaintiff stated that the appointment would last
24 between three and four hours, but he was kept for six hours.

25 yy) Plaintiff continues to be treated differently, disparately, and negatively because of
26 his sex/gender, gender identity or expression, being transgender, and/or his sexual
27 orientation, including but not limited to Defendants harassing Plaintiff (as aforesaid),
28

1 denying Plaintiff opportunities, unfairly disciplining Plaintiff, and overly monitoring and
2 scrutinizing Plaintiff.

3 zz) At least through the July 1, 2020, and continuing, Defendant LACMTA and
4 DOES 1 through 100, and each of them, failed and/or refused to investigate Plaintiff's
5 complaints and take appropriate remedial actions.

6 12. In doing the acts alleged herein, Defendants LACMTA and Bergquist, and DOES 1
7 through 100, and each of them, were substantially motivated by Plaintiff's sex/gender, gender
8 identity or expression, his being transgender, and/or sexual orientation.

9 13. At all times relevant herein, Plaintiff believes and further alleges that Defendant
10 LACMTA and DOES 1 through 100, and each of them, and/or their agents/representatives failed
11 to timely, properly, and/or completely investigate the harassment Plaintiff was routinely
12 subjected to, and instead ratified and condoned the unlawful conduct.

13 14. The acts and conduct of Defendants LACMTA and Bergquist, and DOES 1 through 100,
14 and each of them, as aforesaid, were in violation of California Government Code §§ 12940 et
15 seq. Said statutes impose certain duties upon Defendants LACMTA and Bergquist, and DOES 1
16 through 100, and each of them, concerning harassment against persons, such as Plaintiff, on the
17 basis of sex/gender, gender identity or expression, transgender, and/or sexual orientation
18 harassment.. Said statutes were intended to prevent the type of injury and damage herein set
19 forth.

20 15. By the acts and conduct described above, Defendants LACMTA and Bergquist, and
21 DOES 1 through 100, and each of them, in violation of said statutes, knew about, or should have
22 known about, and failed to investigate and/or properly investigate, prevent or remedy the
23 sex/gender, gender identity or expression, transgender, and/or sexual orientation harassment.
24 The acts of harassment described herein were sufficiently pervasive so as to alter the conditions
25 of employment, and created an abusive working environment.

26 16. Prior to the initiation of this lawsuit, Plaintiff filed a timely complaint against each named
27 Defendant with the DFEH pursuant to Cal. Government Code § 12900 et seq. and has received
28 Right-to-Sue notices in a California Superior Court pursuant to California Government Code §

1 12965(b). Attached hereto and incorporated herein as Exhibit "A" are said Complaints and by
2 reference hereto are made a part hereof. Attached hereto and incorporated herein as Exhibit "B"
3 are said Right-to-Sue notices and by reference hereto are made a part hereof. Plaintiff has
4 therefore exhausted her administrative remedies under the California Government Code.

5 17. As a direct and legal result of the acts and omissions of Defendants LACMTA and
6 Bergquist, and DOES 1 through 100, Plaintiff was rendered sick, sore, lame, disabled and/or
7 disordered, both internally and externally, and/or suffered, among other things, numerous
8 internal injuries, severe fright, shock, pain, discomfort and/or anxiety.

9 18. As a further legal result of the acts and omissions of Defendants LACMTA and
10 Bergquist, and DOES 1 through 100, Plaintiff has been forced and/or will be forced to incur
11 expenses for medical care, X-rays, and/or laboratory costs during the period of Plaintiff's
12 disability, and is informed and believes, and thereon alleges, that he will in the future be forced
13 to incur additional expenses of the same nature, all in an amount which is at present unknown.
14 Plaintiff will pray leave of court to show the exact amount of said expenses at the time of trial.

15 19. Prior to the occurrence of the incidents, Plaintiff was an able-bodied individual, but since
16 said incidents has been unable to engage fully in Plaintiff's occupation, and is informed and
17 believes, and thereon alleges, that Plaintiff will be fully and/or partially incapacitated and/or
18 unable to perform Plaintiff's usual work for an indefinite period of time in the future, all to
19 Plaintiff's damage in an amount which is at present unascertained. Plaintiff will pray leave of
20 court to show the total amount of loss of earnings at the time of trial.

21 20. As a further direct and legal result of the acts and conduct of Defendants LACMTA and
22 Bergquist, and DOES 1 through 100, Plaintiff has been caused, and did suffer, and continues to
23 suffer severe and permanent emotional and mental distress and anguish, humiliation,
24 embarrassment, fright, shock, pain, discomfort and/or anxiety. The exact nature and extent of
25 said injuries is presently unknown to Plaintiff, who will pray leave of court to assert the same
26 when they are ascertained.

27 21. The aforementioned acts of Defendant Bergquist and DOES 1 through 100, and each of
28 them, were willful, wanton, malicious, intentional, oppressive and/or despicable and were done

1 in willful and conscious disregard of the rights, welfare and safety of Plaintiff, thereby justifying
2 the awarding of punitive and exemplary damages against Defendant Bergquist and DOES 1
3 through 100, and each of them, in an amount to be determined at the time of trial pursuant to
4 California Civil Code § 3294(a) and (b).

5 22. By the aforesaid acts and conduct of Defendants LACMTA and Bergquist, and DOES 1
6 through 100, Plaintiff has been directly and legally caused to suffer actual damages pursuant to
7 California Civil Code § 3333 including, but not limited to, loss of earnings and future earning
8 capacity, medical and related expenses for care and procedures both now and in the future,
9 attorneys' fees, and other pecuniary loss not presently ascertained, for which Plaintiff will seek
10 leave of court to amend when ascertained.

11 23. As a result of the harassing acts of Defendants LACMTA and Bergquist, and DOES 1
12 through 100, as alleged herein, Plaintiff is entitled to reasonable attorneys' fees and costs of said
13 suit as specifically provided in California Government Code § 12965(b).

14 24. The FEHA also provides remedies, including but not limited to, declaratory and
15 injunctive relief. As such, Plaintiff is entitled to both declaratory and injunctive relief as a result
16 of the unlawful conduct of Defendants LACMTA and Bergquist.

17 25. Plaintiff has been damaged in an amount within the jurisdictional limits of this Court.

18 **II.**

19 **SECOND CAUSE OF ACTION**

20 **For Sex/Gender/Gender Identity or Expression/Transgender/Sexual Orientation**

21 **Discrimination in Employment**

22 **[California Government Code §§ 12940 et seq.]**

23 **Against Defendant LACMTA & DOES 1 Through 100, Only**

24 26. Plaintiff incorporates herein by reference and re-alleges each and every paragraph in this
25 Complaint as though duly set forth in full herein.

26 27. Defendant LACMTA employed at least five employees during all relevant time periods
27 of Plaintiff's employment.

1 28. Throughout Plaintiff’s employment, occurring continuously through July 1, 2020, and
2 continuing thereafter, Plaintiff was treated differently in the terms and conditions of his
3 employment due to his sex/gender, gender identity or expression, his being transgender, and/or
4 sexual orientation, pursuant to Cal. Gov. Code § 12926(r)(1).

5 29. At all times relevant herein, Plaintiff’s sex/gender, gender identity or expression, his
6 being transgender, and/or sexual orientation made him a member of protected classes pursuant to
7 the Fair Employment & Housing Act (“FEHA”).

8 30. At all times relevant herein, Plaintiff was qualified for and competently performed the
9 position he held throughout her employment with Defendant LACMTA and DOES 1 through
10 100, and each of them.

11 31. As a result of and substantially motivated by Plaintiff’s sex/gender, gender identity or
12 expression, his being transgender, and/or sexual orientation, Defendant LACMTA and DOES 1
13 through 100, and each of them, subjected Plaintiff to discriminatory treatment and/or adverse
14 employment actions including the following, among others:

15 a) In or around January 2016, Plaintiff informed LACMTA’s EEO department –
16 specifically, Jonaura Wisdom – that he is transgender and identifies as male.

17 b) Shortly thereafter, Defendant LACMTA held a meeting with its employees in
18 which it purposely intimidated its employees from asking questions regarding Plaintiff’s
19 gender identity, creating a situation in which everyone knew Plaintiff was transgender but
20 treated him differently because they were afraid to say the wrong thing.

21 c) In or around June 2016, in an effort to intimidate Plaintiff due in substantial part
22 to his sex/gender, Defendant Bergquist commented about another employee, Cynthia
23 Rivera, an employee of which it is common knowledge within the department that is not
24 heterosexual, “If I had a chance, I would be happy to push [co-worker] Cynthia Rivera in
25 front of a high rail vehicle.”

26 d) Critically, Ms. Rivera had a gender nonconforming appearance, thereby directly
27 evidencing Defendant Bergquist’s discriminatory animus towards homosexual and/or
28

1 transgender or gender nonconforming individuals. Additionally, Ms. Rivera had been
2 open about having a variety of gender nonconforming interests.

3 e) In or around July 2016, in response to witnessing Defendant Bergquist's violent
4 comments, Plaintiff lodged a formal written complaint with Department Manager
5 Ricardo Moran.

6 f) However, Department Manager Moran took no remedial or disciplinary action
7 towards Defendant Bergquist's harassing comments and therefore, Defendant LACMTA,
8 through its Department Manager, ratified and condoned Mr. Bergquist's unlawful
9 discriminatory conduct.

10 g) In or around August or September 2016, Plaintiff and his co-worker, Lawrence
11 Lee were assigned to be trained by Defendant Bergquist at Union Station.

12 i. Defendant Bergquist took care to slowly walk Mr. Lee through the
13 training, making sure to thoroughly explain everything to him and ensure Mr. Lee
14 had an understanding of what was supposed to be done.

15 ii. When it came to Plaintiff's part of the training, Defendant Bergquist simply
16 left Plaintiff's presence with Mr. Lee to discuss blueprints, knowing that Plaintiff
17 had no knowledge of how to perform the tasks he was supposed to, since
18 Defendant Bergquist was supposed to be training him on said tasks.

19 iii. Rather, when Plaintiff approached Defendant Bergquist for assistance, Mr.
20 Bergquist began yelling at and insulting Plaintiff in front of his co-worker, in an
21 effort to belittle Plaintiff, based in substantial part on his sex/gender, gender
22 identity or expression, his being transgender, and/or sexual orientation.

23 h) Indeed, Defendant Bergquist went out of his way to continually harass Plaintiff on
24 a severe and/or pervasive basis.

25 i) Moreover, Lawrence Lee stated to Plaintiff, "You are going to be stuck with
26 [Supervisor Bergquist] forever," laughing.

27 j) Due to the severe and/or pervasive harassment that Plaintiff was facing from
28 Defendant Bergquist, Plaintiff complained to Defendant Joseph Cabornida.

1 k) Plaintiff informed Defendant Cabornida of the discriminatory and unlawful
2 conduct and comments he was facing from Defendant Bergquist on a severe and/or
3 pervasive basis, of which Defendant Cabornida admitted he had been aware.

4 l) In fact, rather than stop the harassment, Defendant Cabornida stated to Plaintiff,
5 “My only responsibility is to manage work, not interpersonal relationships, and
6 [Defendant Bergquist] is not violating any policies,” thereby directly evidencing his
7 discriminatory animus.

8 m) However, this was untrue, as Defendant LACMTA has a claimed anti-harassment
9 and anti-bullying policy, which was clearly being violated, as evidenced by Defendant
10 Cabornida’s aforesaid admission.

11 n) As such, Defendant LACMTA was put on notice of FEHA and other policy
12 violations, and ratified and condoned the unlawful harassment, discrimination, and
13 retaliation that Plaintiff was facing due in substantial part to his sex/gender, transgender,
14 gender identity or expression, sexual orientation, and related complaints thereto.

15 o) In or around late 2016, Defendant Bergquist began refusing to tell Plaintiff and
16 Cynthia Rivera what their assignments were but would tell all the other employees under
17 him what their assignments were, directly evidencing his discriminatory animus.

18 p) This forced Plaintiff to have to ask around to simply find out what he was
19 supposed to do.

20 q) In addition, Lawrence Lee would not show up for job assignments but would
21 never face disciplinary action, while Plaintiff regularly faced scrutiny and being overly
22 monitored as a biased personnel management decision on a severe and/or pervasive basis,
23 directly evidencing Defendant Bergquist’s discriminatory animus.

24 r) In or around February 2017, Plaintiff was working on an independent capital
25 improvement project under the direction of Manager Gary Ambrozich.

26 s) Defendant Bergquist went out of his way to go to the location where Plaintiff was
27 working, and as a biased personnel management decision, scrutinize and monitor his
28 work, and subsequently tell Manager Ambrozich that Plaintiff did something wrong in

1 order to further harass Plaintiff, even though Defendant Bergquist was not Plaintiff's
2 direct supervisor at that time.

3 t) Defendant Bergquist's biased personnel management decision to not address the
4 issue he found and to circumvent Plaintiff to go directly to Manager Ambrozich is direct
5 evidence of Defendant Bergquist's discriminatory animus.

6 u) In or around July 2018, Plaintiff was forced to take a medical leave of absence
7 due to major depression, which he had been previously been diagnosed with, and which
8 Defendant LACMTA was on notice of per an email from Plaintiff to Manager
9 Ambrozich.

10 v) In or around June 2019, Plaintiff returned from his leave and was placed on a shift
11 in which his direct supervisor was Defendant Lead Bergquist.

12 w) Upon Plaintiff's return, he experienced the same unlawful and harassing conduct
13 on account of his sex/gender, transgender, gender identity or expression, and/or sexual
14 orientation.

15 x) For instance, Defendant Bergquist referred to Cynthia Rivera as "Mini Rambo,"
16 in direct reference to her gender nonconforming appearance. Defendant Bergquist
17 purposefully made this comment in the presence of Plaintiff in order to harass, having
18 known that Plaintiff is a transgender individual, directly evidencing his discriminatory
19 animus.

20 y) In fact, Defendant Bergquist came to Plaintiff's shared workspace on a severe
21 and/or pervasive basis, where Defendant Bergquist did not work, and made comments
22 regarding females, such as one directed towards Heavy Rail Inspector Esther Ang, "I was
23 worried she was going to come to Third Shift but I guess she doesn't want to work, so
24 she stayed on Second Shift."

25 z) Defendant Bergquist made this and other gender-charged comments in order to
26 harass and intimidate Plaintiff. Defendant Bergquist going out of his way to come to an
27 area where he did not work in order to make gender-charged comments in the presence of
28 Plaintiff is yet more direct evidence of his discriminatory animus.

1 aa) On or about June 20, 2019, Plaintiff was called into a Project Briefing meeting
2 with Defendant Bergquist and Supervisor Moses Jones in which Defendant Bergquist
3 was told to discuss the details of his current project with Plaintiff, give him copies of
4 prints, take Plaintiff for an on-site walkthrough, among other things.

5 bb) The very next day, on or about June 21, 2019, Plaintiff noticed that Defendant
6 Bergquist had, as a biased personnel management decision, assigned himself and another
7 employee, Tuan Nguyen, to work on what Plaintiff was supposed to work on and
8 assigned Plaintiff elsewhere, once again directly evidencing his discriminatory animus.

9 cc) Plaintiff then directly asked Defendant Bergquist whether he had any plans to
10 follow Supervisor Jones' instructions to brief him on the project, to which Defendant
11 Bergquist responded that Plaintiff could go look at the room in question on his own if he
12 wanted to.

13 dd) As a result, Plaintiff emailed Manager Ambrozich and Supervisor Jones,
14 protesting and asking to be relieved of responsibility for the project and detailed why,
15 including his fear of worsening discrimination by Lead Shift Bergquist.

16 ee) Moreover, on or about June 22, 2019, contrary to Plaintiff's request and without
17 supervision talking to him beforehand, Plaintiff was forced into another project briefing
18 meeting with Moses Jones, Joseph Cabornida, Brian Bergquist, Tuan Nguyen, and Mai
19 Cowart.

20 ff) Supervisor Jones reiterated that he wanted Defendant Bergquist to share the
21 previously requested information with Plaintiff, at which point Plaintiff informed
22 Defendant Bergquist he had requested to be excused from the project completely.
23 Supervisor Jones thereafter left rapidly, stating that it was a "Third shift issue," so it was
24 not his responsibility.

25 gg) To wit, Plaintiff explained that he was not interested in trying to force Defendant
26 Bergquist to collaborate with him when he has a track record of clearly not being
27 interested in doing so.
28

1 hh) In response, Defendant Bergquist brought up Plaintiff having reported him for his
2 comments regarding Cynthia Rivera in 2016, explicitly admitting his discriminatory and
3 retaliatory animus against Plaintiff from 2016 to 2019 for having complained regarding
4 his unlawful comments, which violated both the FEHA and LACMTA policy.
5 Egregiously, this comment was made in the presence of Manager Cabornida, to which
6 there was no reaction and against which no remedial or disciplinary action was taken.

7 ii) Despite Defendant Bergquist's astonishing admission that he had been harassing,
8 discriminating, and retaliating against Plaintiff for three years, Defendant Cabornida
9 proceeded to tell Plaintiff that it was *his* attitude, *not* Defendant's Bergquist's behavior,
10 that was causing Plaintiff's "problems," and that discussing the problem and/or seeking
11 help was, in his opinion, unprofessional.

12 jj) Further, Mr. Cabornida referred to the original complaint that Plaintiff filed in
13 2016 as "what [he] did to [Defendant Bergquist]," and stated that Plaintiff is making a
14 power grab to "get [his] way," directly evidencing his discriminatory animus.

15 kk) Defendant Cabornida finished the meeting by stating to Plaintiff that Defendant
16 Bergquist was in charge, and that as long as he did not tell Plaintiff to do something
17 unsafe, that Plaintiff *had to* do whatever Defendant Bergquist told him to do.

18 ll) On or about August 7, 2019, Plaintiff was called into a meeting in order to resolve
19 the ongoing issues with Defendant Bergquist. Present at this meeting were Defendant
20 Cabornida, Manager Ambrozich, and Director Moran.

21 mm) Once again, Defendant Bergquist berated Plaintiff and told him *in front of three*
22 *different levels of management*, "If you don't like the way you are being treated,
23 unemployment is very low, and you should go find another job." All three levels of
24 supervisors sat by and watched and did nothing to remediate the unlawful harassment of
25 and discrimination against Plaintiff, thereby ratifying and condoning Defendant
26 Bergquist's conduct.

27 nn) On or about November 15, 2019, while working at the Westlake Station, Plaintiff
28 realized he had forgotten some equipment and asked Defendant Bergquist whether he had

1 the equipment, to which Defendant Bergquist stated he did not, forcing Plaintiff to go
2 retrieve the equipment.

3 oo) However, upon Plaintiff's return, Defendant Bergquist disclosed that *there was*
4 *actually no work that needed to be done by Plaintiff on the rail*, demonstrating he had
5 forced Plaintiff to go back and forth for no reason except to harass Plaintiff, thereby
6 directly evidencing his discriminatory animus.

7 pp) Towards the end of November 2019, Plaintiff managed to bid onto on a different
8 shift, which would mean he would be away from Defendant Bergquist for at least six
9 months. Subsequently, during the department's job briefing, Defendant Cabornida began
10 criticizing the employees, including Plaintiff, for being behind on relay testing.

11 qq) In response, Plaintiff explained that they were behind because they had not been
12 properly trained, at which point Defendant Bergquist shouted, "I am not going to listen to
13 this individual," a direct reference to Plaintiff's transgender status and directly evidencing
14 his discriminatory animus.

15 rr) At that point, Plaintiff disclosed that he was changing shifts, to which Defendant
16 Bergquist responded sarcastically, "I heard about the good news," and attempting to
17 shake Plaintiff' hand in an effort to physically intimidate him.

18 ss) Ultimately, due to the hostile work environment Plaintiff faced since his hiring by
19 LACMTA, Plaintiff pursued a Workers' Compensation claim.

20 tt) However, despite LACMTA's knowledge of Plaintiff's status as transgender,
21 LACMTA sent him to a therapist whose office was located in a conversion therapy clinic,
22 directly evidencing its discriminatory animus.

23 uu) Even worse, an entire wall of the waiting room where Plaintiff was left alone to
24 complete paperwork for over two hours prior to being seen was decorated with framed
25 book covers referencing the evils of homosexuality and promoting so-called "reparative
26 therapy."

27 vv) When Plaintiff went into his evaluation, the doctor he spoke to, obviously having
28 knowledge that Plaintiff is transgender, inquired and/or commented about the following:

- i. About Plaintiff’ plans (or lack thereof) for genital surgery;
- ii. Expressed skepticism regarding the number of trans people today as opposed to 30 years ago;
- iii. Asked what Plaintiff name was previously;
- iv. Asked which gender(s) Plaintiff was attracted to; and
- v. Spoke about Dr. John Money as a respected researcher (Money claimed that gender identity is primarily learned, not innate).

ww) Lastly, the scheduling letter for Plaintiff stated that the appointment would last between three and four hours, but he was kept for six hours.

xx) Plaintiff continues to be treated differently, disparately, and negatively because of his sex/gender, gender identity or expression, being transgender, and/or his sexual orientation, including but not limited to Defendants harassing Plaintiff (as aforesaid), denying Plaintiff opportunities, unfairly disciplining Plaintiff, and overly monitoring and scrutinizing Plaintiff.

yy) At least through the July 1, 2020, and continuing, Defendant LACMTA and DOES 1 through 100, and each of them, failed and/or refused to investigate Plaintiff’s complaints and take appropriate remedial actions.

32. In doing the acts alleged herein, Defendant LACMTA and DOES 1 through 100, and each of them, were substantially motivated by Plaintiff’s sex/gender, gender identity or expression, his being transgender, and/or sexual orientation.

33. Plaintiff is informed, believes, and herein alleges that other gender conforming, non-transgender, and/or heterosexual employees were not similarly subjected to such treatment.

34. At all times relevant herein, Plaintiff believes and further alleges that Defendant LACMTA and DOES 1 through 100, and/or their agents/representatives failed to timely, properly, and/or completely investigate the discrimination Plaintiff was routinely subjected to, and instead ratified and condoned the unlawful conduct.

35. The acts and conduct of Defendant LACMTA and DOES 1 through 100, and each of them, as aforesaid, were in violation of Cal. Gov. Code §§ 12940 et seq. Said statutes impose

1 certain duties upon Defendant LACMTA and DOES 1 through 100, and each of them,
2 concerning discrimination against persons, such as Plaintiff, on the basis of sex/gender, gender
3 identity or expression, being transgender, and/or sexual orientation. Said statutes were intended
4 to prevent the type of injury and damage herein set forth.

5 36. By the acts and conduct described above, Defendant LACMTA and DOES 1 through
6 100, and each of them, in violation of said statutes, knew about, or should have known about,
7 and failed to investigate and/or properly investigate, prevent or remedy the sex/gender, gender
8 identity or expression, transgender, and/or sexual orientation discrimination.

9 37. Prior to the initiation of this lawsuit, Plaintiff filed a timely complaint against each named
10 Defendant with the DFEH pursuant to Cal. Gov. Code § 12900 et seq. and has received Right-to-
11 Sue notices in a California Superior Court pursuant to California Government Code § 12965(b).
12 Attached hereto and incorporated herein as Exhibit “A” are said Complaints and by reference
13 hereto are made a part hereof. Attached hereto and incorporated herein as Exhibit “B” are said
14 Right-to-Sue notices and by reference hereto are made a part hereof. Plaintiff has therefore
15 exhausted his administrative remedies under the California Government Code.

16 38. As a direct and legal result of the acts and omissions of Defendant LACMTA and DOES
17 1 through 100, Plaintiff was rendered sick, sore, lame, disabled and/or disordered, both internally
18 and externally, and/or suffered, among other things, numerous internal injuries, severe fright,
19 shock, pain, discomfort and/or anxiety.

20 39. As a further legal result of the acts and omissions of Defendant LACMTA and DOES 1
21 through 100, and each of them, Plaintiff has been forced and/or will be forced to incur expenses
22 for medical care, X-rays, and/or laboratory costs during the period of Plaintiff’s disability, and is
23 informed and believes, and thereon alleges, that he will in the future be forced to incur additional
24 expenses of the same nature, all in an amount which is at present unknown. Plaintiff will pray
25 leave of court to show the exact amount of said expenses at the time of trial.

26 40. Prior to the occurrence of the incidents, Plaintiff was an able-bodied individual, but since
27 said incidents has been unable to engage fully in Plaintiff’s occupation, and is informed and
28 believes, and thereon alleges, that Plaintiff will be fully and/or partially incapacitated and/or

1 unable to perform Plaintiff's usual work for an indefinite period of time in the future, all to
2 Plaintiff's damage in an amount which is at present unascertained. Plaintiff will pray leave of
3 court to show the total amount of loss of earnings at the time of trial.

4 41. As a further direct and legal result of the acts and conduct of Defendant LACMTA and
5 DOES 1 through 100, Plaintiff has been caused, and did suffer, and continues to suffer severe
6 and permanent emotional and mental distress and anguish, humiliation, embarrassment, fright,
7 shock, pain, discomfort and/or anxiety. The exact nature and extent of said injuries is presently
8 unknown to Plaintiff, who will pray leave of court to assert the same when they are ascertained.

9 42. By the aforesaid acts and conduct of Defendant LACMTA and DOES 1 through 100,
10 Plaintiff has been directly and legally caused to suffer actual damages pursuant to California
11 Civil Code § 3333 including, but not limited to, loss of earnings and future earning capacity,
12 medical and related expenses for care and procedures both now and in the future, attorneys' fees,
13 and other pecuniary loss not presently ascertained, for which Plaintiff will seek leave of court to
14 amend when ascertained.

15 43. As a result of the discriminatory acts of Defendant LACMTA and DOES 1 through 100,
16 as alleged herein, Plaintiff is entitled to reasonable attorneys' fees and costs of said suit as
17 specifically provided in California Government Code § 12965(b).

18 44. The FEHA also provides remedies, including but not limited to, declaratory and
19 injunctive relief. As such, Plaintiff is entitled to both declaratory and injunctive relief as a result
20 of the unlawful conduct of Defendant LACMTA and DOES 1 through 100, and each of them.

21 45. Plaintiff has been damaged in an amount within the jurisdictional limits of this Court.

22 ///

23 ///

24 ///

25 ///

26 ///

27 ///

28 ///

1 **III.**

2 **THIRD CAUSE OF ACTION**

3 **For Sex/Gender/Gender Identity or Expression/Transgender/Sexual Orientation in**
4 **Employment**

5 **[California Government Code §§ 12940 et seq.]**

6 **Against Defendant LACMTA & DOES 1 Through 100, Only**

7 46. Plaintiff incorporates herein by reference and re-alleges each and every paragraph in this
8 Complaint as though duly set forth in full herein.

9 47. At all times relevant herein, Plaintiff's sex/gender, gender identity or expression, his
10 being transgender, and/or sexual orientation made him a member of protected classes pursuant to
11 the Fair Employment & Housing Act ("FEHA").

12 48. Starting during Plaintiff's employment with Defendant LACMTA, continuing through
13 July 1, 2020, and continuing, Defendant LACMTA and DOES 1 through 100, and each of them,
14 retaliated against Plaintiff as a result of Plaintiff asserting his legal rights and/or complaining
15 about and/or protesting against the sex/gender, gender identity or expression, transgender, and/or
16 sexual orientation harassment and discrimination Plaintiff was subjected to.

17 49. Plaintiff asserted his legal rights, for example partaking in protected activity and
18 protesting and complaining, on the following occasions, among others:

19 a) In or around January 2016, Plaintiff informed LACMTA's EEO department –
20 specifically, Jonaura Wisdom – that he is transgender and identifies as male.

21 b) In or around July 2016, in response to witnessing Defendant Bergquist's violent
22 comments regarding Cynthia Rivera, an individual with a gender nonconforming
23 appearance and known to be non-heterosexual, Plaintiff lodged a formal written
24 complaint with Department Manager Ricardo Moran.

25 c) In or around December 2016 Plaintiff complained to Defendant Cabornida of the
26 harassing and discriminatory conduct and comments he was facing from Defendant
27 Bergquist on a severe and/or pervasive basis, of which Defendant Cabornida admitted he
28 had been aware.

1 d) In or around June 2019, Plaintiff then directly asked Defendant Bergquist whether
2 he had any plans to follow Supervisor Jones' instructions to brief him on the project, to
3 which Defendant Bergquist responded that Plaintiff could go look at the room in question
4 on his own if he wanted to.

5 e) On or about June 22, 2019, as a result, Plaintiff emailed Manager Ambrozich and
6 Supervisor Jones, protesting and asking to be relieved of responsibility for the project and
7 detailed why, including his fear of worsening discrimination by Defendant Bergquist.

8 f) Subsequently, on or about June 25, 2019, Plaintiff then escalated his complaints
9 to the Equal Employment Opportunity department at LACMTA to address the unlawful
10 harassment, discrimination, and retaliation he had been facing. However, the EEO
11 department referred Plaintiff to the HEAR department. Accordingly, Plaintiff began
12 documenting and sending emails to HEAR on a consistent basis as unlawful conduct
13 occurred in the workplace.

14 g) Towards the end of November 2019, during a job briefing in which employees
15 were criticized for being behind on relay testing, Plaintiff complained that they were not
16 being properly trained.

17 h) On or about November 28, 2019, Plaintiff complained to Jessenia Rowe in
18 Human Resources regarding the harassment and discrimination he was experiencing at
19 the hands of Defendant Bergquist on a severe and/or pervasive basis.

20 i) On or about December 3, 2019, Plaintiff again complained to Jessenia Rowe in
21 HR regarding the harassment and discrimination he was experiencing at the hands of
22 Defendant Bergquist on a severe and/or pervasive basis, specifically detailing in a
23 timeline his experiences.

24 j) Ultimately, due to the hostile work environment Plaintiff faced since his hiring by
25 LACMTA, Plaintiff pursued a Workers' Compensation claim in or around December
26 2019

27 k) On or about January 21, 2020, Plaintiff complained to LACMTA regarding the
28 incident at the conversion therapy clinic along with pictures as evidence.

1 1) On or about June 2, 2020, Plaintiff sent Defendants a Notice of Claims Letter and
2 Request for Employment Records, outlining in detail his potential claims against
3 Defendants, including his sex/gender, gender identity or expression, transgender, and/or
4 sexual orientation harassment, discrimination, and retaliation claims.

5 50. However, Defendant LACMTA and DOES 1 through 100, and each of them, retaliated
6 against Plaintiff, due to and substantially motivated by Plaintiff’s actual/perceived disability(s),
7 requesting accommodations, or protected finite leave, and/or due to Plaintiff engaging in the
8 aforesaid legally protected activities (complaints/protests), through the following actions, among
9 others:

10 a) In or around January 2016, shortly after Plaintiff informed Defendant LACMTA
11 of his transgender status, Defendant LACMTA held a meeting with its employees in
12 which it purposely intimidated its employees from asking questions regarding Plaintiff’s
13 gender identity, creating a situation in which everyone knew Plaintiff was transgender but
14 treated him differently because they were afraid to say the wrong thing.

15 b) In or around June 2016, in an effort to intimidate Plaintiff due in substantial part
16 to his sex/gender, Defendant Bergquist commented about another employee, Cynthia
17 Rivera, an employee of which it is common knowledge within the department that is not
18 heterosexual, “If I had a chance, I would be happy to push [co-worker] Cynthia Rivera in
19 front of a high rail vehicle.”

20 c) Critically, Ms. Rivera had a gender nonconforming appearance, thereby directly
21 evidencing Defendant Bergquist’s discriminatory and retaliatory animus towards
22 homosexual and/or transgender, or gender nonconforming individuals. Additionally, Ms.
23 Rivera had been open about having a variety of gender nonconforming interests.

24 d) Department Manager Moran took no remedial or disciplinary action towards
25 Defendant Bergquist’s harassing and discriminatory comments and therefore, Defendant
26 LACMTA, through its Department Manager, ratified and condoned Mr. Bergquist’s
27 unlawful discriminatory and retaliatory conduct.
28

1 e) In or around August or September 2016, Plaintiff and his co-worker, Lawrence
2 Lee were assigned to be trained by Defendant Bergquist at Union Station.

3 i. Defendant Bergquist took care to slowly walk Mr. Lee through the
4 training, making sure to thoroughly explain everything to him and ensure Mr. Lee
5 had an understanding of what was supposed to be done.

6 ii. When it came to Plaintiff's part of the training, Defendant Bergquist simply
7 left Plaintiff's presence with Mr. Lee to discuss blueprints, knowing that Plaintiff
8 had no knowledge of how to perform the tasks he was supposed to, since
9 Defendant Bergquist was supposed to be training him on said tasks.

10 iii. Rather, when Plaintiff approached Defendant Bergquist for assistance, Mr.
11 Bergquist began yelling at and insulting Plaintiff in front of his co-worker, in an
12 effort to belittle Plaintiff, based in substantial part on his sex/gender, gender
13 identity or expression, his being transgender, and/or sexual orientation.

14 f) Indeed, Defendant Bergquist went out of his way to continually harass Plaintiff on
15 a severe and/or pervasive basis, directly evidencing his retaliatory animus.

16 g) Moreover, Lawrence Lee stated to Plaintiff, "You are going to be stuck with
17 [Defendant Bergquist] forever," laughing.

18 h) Rather than stop the harassment and discrimination of Plaintiff upon being
19 informed of it, Defendant Cabornida stated to Plaintiff, "My only responsibility is to
20 manage work, not interpersonal relationships, and [Defendant Bergquist] is not violating
21 any policies," thereby directly evidencing his retaliatory animus.

22 i) However, this was untrue, as Defendant LACMTA has a claimed anti-harassment
23 and anti-bullying policy, which was clearly being violated, as evidenced by Defendant
24 Cabornida's aforesaid admission.

25 j) As such, Defendant LACMTA was put on notice of FEHA and other policy
26 violations, and ratified and condoned the unlawful harassment, discrimination, and
27 retaliation that Plaintiff was facing due in substantial part to his sex/gender, transgender,
28 gender identity or expression, sexual orientation, and related complaints thereto.

1 k) In or around late 2016, Defendant Bergquist began refusing to tell Plaintiff and
2 Cynthia Rivera what their assignments were but would tell all the other employees under
3 him what their assignments were, directly evidencing his discriminatory and retaliatory
4 animus. This forced Plaintiff to have to ask around to simply find out what he was
5 supposed to do.

6 l) In addition, Lawrence Lee would not show up for job assignments but would
7 never face disciplinary action, while Plaintiff regularly faced scrutiny and being overly
8 monitored as a biased personnel management decision on a severe and/or pervasive basis,
9 directly evidencing Defendant Bergquist's discriminatory and retaliatory animus.

10 m) In or around February 2017, Plaintiff was working on an independent capital
11 improvement project under the direction of Manager Gary Ambrozich.

12 n) Defendant Bergquist went out of his way to go to the location where Plaintiff was
13 working, and as a biased personnel management decision, scrutinize and monitor his
14 work, and subsequently tell Manager Ambrozich that Plaintiff did something wrong in
15 order to further harass Plaintiff, even though Defendant Bergquist was not Plaintiff's
16 direct supervisor at that time.

17 o) Defendant Bergquist's biased personnel management decision to not address the
18 issue he found and to circumvent Plaintiff to go directly to Manager Ambrozich is direct
19 evidence of Defendant Bergquist's discriminatory and retaliatory animus.

20 p) In or around July 2018, Plaintiff was forced to take a medical leave of absence
21 due to major depression, which he had been previously been diagnosed with, and which
22 Defendant LACMTA was on notice of per an email from Plaintiff to Manager
23 Ambrozich.

24 q) In or around June 2019, Plaintiff returned from his leave and was placed on a shift
25 in which his direct supervisor was Defendant Lead Bergquist.

26 r) Upon Plaintiff's return, he experienced the same unlawful harassing and
27 discriminatory conduct on account of his sex/gender, transgender, gender identity or
28 expression, and/or sexual orientation.

1 s) For instance, Defendant Bergquist referred to Cynthia Rivera as “Mini Rambo,”
2 in direct reference to her gender nonconforming appearance. Defendant Bergquist
3 purposefully made this comment in the presence of Plaintiff in order to harass and
4 discriminate, having known that Plaintiff is a transgender individual, directly evidencing
5 his discriminatory and retaliatory animus.

6 t) In fact, Defendant Bergquist came to Plaintiff’s shared workspace on a severe
7 and/or pervasive basis, where Defendant Bergquist did not work, and made comments
8 regarding females, such as one directed towards Heavy Rail Inspector Esther Ang, “I was
9 worried she was going to come to Third Shift but I guess she doesn’t want to work, so
10 she stayed on Second Shift.”

11 u) Defendant Bergquist made this and other gender-charged comments in order to
12 harass, discriminate and intimidate Plaintiff. Defendant Bergquist going out of his way to
13 come to an area where he did not work in order to make gender-charged comments in the
14 presence of Plaintiff is yet more direct evidence of his discriminatory and retaliatory
15 animus.

16 v) On or about June 20, 2019, Plaintiff was called into a Project Briefing meeting
17 with Defendant Bergquist and Supervisor Moses Jones in which Defendant Bergquist
18 was told to discuss the details of his current project with Plaintiff, give him copies of
19 prints, take Plaintiff for an on-site walkthrough, among other things.

20 w) The very next day, on or about June 21, 2019, Plaintiff noticed that Defendant
21 Bergquist had, as a biased personnel management decision, assigned himself and another
22 employee, Tuan Nguyen, to work on what Plaintiff was supposed to work on and
23 assigned Plaintiff elsewhere, once again directly evidencing his discriminatory and
24 retaliatory animus.

25 x) Moreover, on or about June 22, 2019, contrary to Plaintiff’s request and without
26 supervision talking to him beforehand, Plaintiff was forced into another project briefing
27 meeting with Moses Jones, Joseph Cabornida, Brian Bergquist, Tuan Nguyen, and Mai
28 Cowart.

1 y) Supervisor Jones reiterated that he wanted Defendant Bergquist to share the
2 previously requested information with Plaintiff, at which point Plaintiff informed
3 Defendant Bergquist he had requested to be excused from the project completely.
4 Supervisor Jones thereafter left rapidly, stating that it was a “Third shift issue,” so it was
5 not his responsibility.

6 z) To wit, Plaintiff explained that he was not interested in trying to force Defendant
7 Bergquist to collaborate with him when he has a track record of clearly not being
8 interested in doing so.

9 aa) In response, Defendant Bergquist brought up Plaintiff having reported him for his
10 comments regarding Cynthia Rivera in 2016, explicitly admitting his discriminatory and
11 retaliatory animus against Plaintiff from 2016 to 2019 for having complained regarding
12 his unlawful comments, which violated both the FEHA and LACMTA policy.
13 Egregiously, this comment was made in the presence of Manager Cabornida, to which
14 there was no reaction and against which no remedial or disciplinary action was taken.

15 bb) Despite Defendant Bergquist’s astonishing admission that he had been harassing,
16 discriminating, and retaliating against Plaintiff for three years, Defendant Cabornida
17 proceeded to tell Plaintiff that it was *his* attitude, *not* Defendant’s Bergquist’s behavior,
18 that was causing Plaintiff’s “problems,” and that discussing the problem and/or seeking
19 help was, in his opinion, unprofessional, thereby directly evidencing his discriminatory
20 and retaliatory animus.

21 cc) Further, Mr. Cabornida referred to the original complaint that Plaintiff filed in
22 2016 as “what [he] did to [Defendant Bergquist],” and stated that Plaintiff is making a
23 power grab to “get [his] way,” directly evidencing his discriminatory and retaliatory
24 animus.

25 dd) Defendant Cabornida finished the meeting by stating to Plaintiff that Defendant
26 Bergquist was in charge, and that as long as he did not tell Plaintiff to do something
27 unsafe, that Plaintiff *had to* do whatever Defendant Bergquist told him to do.
28

1 ee) On or about August 7, 2019, Plaintiff was called into a meeting in order to resolve
2 the ongoing issues with Defendant Bergquist. Present at this meeting were Defendant
3 Cabornida, Manager Ambrozich, and Director Moran.

4 ff) Once again, Defendant Bergquist berated Plaintiff and told him *in front of three*
5 *different levels of management*, “If you don’t like the way you are being treated,
6 unemployment is very low, and you should go find another job.” All three levels of
7 supervisors sat by and watched and did nothing to remediate the unlawful harassment of
8 and discrimination against Plaintiff, thereby ratifying and condoning Defendant
9 Bergquist’s conduct and directly evidencing their discriminatory and retaliatory animus.

10 gg) On or about November 15, 2019, while working at the Westlake Station, Plaintiff
11 realized he had forgotten some equipment and asked Defendant Bergquist whether he had
12 the equipment, to which Defendant Bergquist stated he did not, forcing Plaintiff to go
13 retrieve the equipment.

14 hh) However, upon Plaintiff’s return, Defendant Bergquist disclosed that *there was*
15 *actually no work that needed to be done by Plaintiff on the rail*, demonstrating he had
16 forced Plaintiff to go back and forth for no reason except to harass Plaintiff, thereby
17 directly evidencing his discriminatory and retaliatory animus.

18 ii) Towards the end of November 2019, Plaintiff managed to bid onto on a different
19 shift, which would mean he would be away from Defendant Bergquist for at least six
20 months. Subsequently, during the department’s job briefing, Defendant Cabornida began
21 criticizing the employees, including Plaintiff, for being behind on relay testing.

22 jj) In response, Plaintiff explained that they were behind because they had not been
23 properly trained, at which point Defendant Bergquist shouted, “I am not going to listen to
24 this individual,” a direct reference to Plaintiff’s transgender status and directly evidencing
25 his discriminatory and retaliatory animus.

26 kk) At that point, Plaintiff disclosed that he was changing shifts, to which Defendant
27 Bergquist responded sarcastically, “I heard about the good news,” and attempting to
28

1 shake Plaintiff' hand in an effort to physically intimidate him, directly evidencing his
2 discriminatory and retaliatory animus.

3 ll) After Plaintiff filed a Workers' Compensation claim as a result of the constant
4 harassment and discrimination, and despite LACMTA's knowledge of Plaintiff's status
5 as transgender, LACMTA sent him to a therapist whose office was located in a
6 conversion therapy clinic, directly evidencing its discriminatory and retaliatory animus.

7 mm) Even worse, an entire wall of the waiting room where Plaintiff was left alone to
8 complete paperwork for over two hours prior to being seen was decorated with framed
9 book covers referencing the evils of homosexuality and promoting so-called "reparative
10 therapy."

11 nn) When Plaintiff went into his evaluation, the doctor he spoke to, obviously having
12 knowledge that Plaintiff is transgender, inquired and/or commented about the following:

- 13 i. About Plaintiff' plans (or lack thereof) for genital surgery;
- 14 ii. Expressed skepticism regarding the number of trans people today as
15 opposed to 30 years ago;
- 16 iii. Asked what Plaintiff name was previously;
- 17 iv. Asked which gender(s) Plaintiff was attracted to; and
- 18 v. Spoke about Dr. John Money as a respected researcher (Money claimed
19 that gender identity is primarily learned, not innate).

20 oo) Further, the scheduling letter for Plaintiff stated that the appointment would last
21 between three and four hours, but he was kept for six hours.

22 pp) After informing Defendant LACMTA regarding the incident at the conversion
23 therapy clinic along with pictures as evidence, Defendant LACMTA's only response was
24 to advise their third-party administrator, Pro-Health, not to refer Defendant LACMTA
25 employees to that location anymore.

26 qq) Defendant LACMTA once again failed to take proper measures and/or remediate
27 Plaintiff's situation and the constant harassment, discrimination, and retaliation that he
28 faced, thereby directly evidencing its retaliatory animus.

1 rr) Plaintiff continues to be treated differently, disparately, and negatively because of
2 his sex/gender, gender identity or expression, being transgender, and/or his sexual
3 orientation, including but not limited to Defendants harassing Plaintiff (as aforesaid),
4 denying Plaintiff opportunities, unfairly disciplining Plaintiff, and overly monitoring and
5 scrutinizing Plaintiff.

6 ss) At least through the July 1, 2020, and continuing, Defendant LACMTA and
7 DOES 1 through 100, and each of them, failed and/or refused to investigate Plaintiff's
8 complaints and take appropriate remedial actions.

9 51. In doing the acts alleged herein, Defendant LACMTA and DOES 1 through 100, and
10 each of them, were substantially motivated by Plaintiff's actual/perceived disabilities, need for
11 accommodations, need for legally protected medical leave, and/or aforesaid legally protected
12 activities (complaints/protests).

13 52. At all times relevant herein, Plaintiff believes and further alleges that Defendant
14 LACMTA and DOES 1 through 100, and each of them, and/or its agents/representatives failed to
15 timely, properly, and/or completely investigate the retaliation Plaintiff was routinely subjected to
16 and ratified and condoned the unlawful behavior.

17 53. The acts and conduct of Defendant LACMTA and DOES 1 through 100, and each of
18 them, as aforesaid, were in violation of California Government Code §§ 12940 et seq. Said
19 statutes impose certain duties upon Defendant LACMTA and DOES 1 through 100, and each of
20 them, concerning retaliation against persons, such as Plaintiff, on the basis of sex/gender, gender
21 identity or expression, being transgender, and/or sexual orientation and the prohibition of
22 retaliation based thereon. Said statutes were intended to prevent the type of injury and damage
23 herein set forth.

24 54. By the acts and conduct described above, Defendant LACMTA and DOES 1 through
25 100, and each of them, in violation of said statutes, knew about, or should have known about,
26 and failed to investigate and/or properly investigate, prevent or remedy the of sex/gender, gender
27 identity or expression, transgender, and/or sexual orientation retaliation. When Plaintiff was
28 retaliated against, Plaintiff's of sex/gender, gender identity or expression, being transgender,

1 and/or sexual orientation, and/or complaints about the unlawful conduct were substantial
2 motivating reasons and/or factors in Defendant LACMTA's conduct.

3 55. Prior to the initiation of this lawsuit, Plaintiff filed a timely complaint against each named
4 Defendant with the DFEH pursuant to Cal. Government Code § 12900 et seq. and has received
5 Right-to-Sue notices in a California Superior Court pursuant to California Government Code §
6 12965(b). Attached hereto and incorporated herein as Exhibit "A" are said Complaints and by
7 reference hereto are made a part hereof. Attached hereto and incorporated herein as Exhibit "B"
8 are said Right-to-Sue notices and by reference hereto are made a part hereof. Plaintiff has
9 therefore exhausted Plaintiff's administrative remedies under the California Government Code.

10 56. As a direct and legal result of the acts and omissions of Defendant LACMTA and DOES
11 1 through 100, Plaintiff was rendered sick, sore, lame, disabled and/or disordered, both internally
12 and externally, and/or suffered, among other things, numerous internal injuries, severe fright,
13 shock, pain, discomfort and/or anxiety.

14 57. As a further legal result of the acts and omissions of Defendant LACMTA and DOES 1
15 through 100, Plaintiff has been forced and/or will be forced to incur expenses for medical care,
16 X-rays, and/or laboratory costs during the period of Plaintiff's disability, and is informed and
17 believes, and thereon alleges, that he will in the future be forced to incur additional expenses of
18 the same nature, all in an amount which is at present unknown. Plaintiff will pray leave of court
19 to show the exact amount of said expenses at the time of trial.

20 58. Prior to the occurrence of the incidents, Plaintiff was an able-bodied individual, but since
21 said incidents has been unable to engage fully in Plaintiff's occupation, and is informed and
22 believes, and thereon alleges, that Plaintiff will be fully and/or partially incapacitated and/or
23 unable to perform Plaintiff's usual work for an indefinite period of time in the future, all to
24 Plaintiff's damage in an amount which is at present unascertained. Plaintiff will pray leave of
25 court to show the total amount of loss of earnings at the time of trial.

26 59. As a further direct and legal result of the acts and conduct of Defendant LACMTA and
27 DOES 1 through 100, and each of them, Plaintiff has been caused, and did suffer, and continues
28 to suffer severe and permanent emotional and mental distress and anguish, humiliation,

1 embarrassment, fright, shock, pain, discomfort and/or anxiety. The exact nature and extent of
2 said injuries is presently unknown to Plaintiff, who will pray leave of court to assert the same
3 when they are ascertained.

4 60. By the aforesaid acts and conduct of Defendant LACMTA and DOES 1 through 100,
5 Plaintiff has been directly and legally caused to suffer actual damages pursuant to California
6 Civil Code § 3333 including, but not limited to, loss of earnings and future earning capacity,
7 medical and related expenses for care and procedures both now and in the future, attorneys' fees,
8 and other pecuniary loss not presently ascertained, for which Plaintiff will seek leave of court to
9 amend when ascertained.

10 61. As a result of the retaliatory acts of Defendant LACMTA and DOES 1 through 100, as
11 alleged herein, Plaintiff is entitled to reasonable attorneys' fees and costs of said suit as
12 specifically provided in California Government Code § 12965(b).

13 62. The FEHA also provides remedies, including but not limited to, declaratory and
14 injunctive relief. As such, Plaintiff is entitled to both declaratory and injunctive relief as a result
15 of the unlawful conduct of Defendant LACMTA and DOES 1 through 100, and each of them.

16 63. Plaintiff has been damaged in an amount within the jurisdictional limits of this Court.

17 **IV.**

18 **FOURTH CAUSE OF ACTION**

19 **For Actual/Perceived Disability Harassment in Employment**

20 **[California Government Code § 12940 et. seq.]**

21 **Against Defendants LACMTA and Joseph Cabornida, & DOES 1 Through 100, Only**

22 Plaintiff incorporates herein by reference and re-alleges each and every paragraph in this
23 Complaint as though duly set forth in full herein.

24 64. At all times relevant herein, Plaintiff has been an actual, perceived, and/or potentially
25 disabled person within the meaning of Cal. Gov. Code §§ 12926.1(b) et seq., because Plaintiff
26 was a person with an actual, perceived, potentially disabling, and/or potentially disabling in the
27 future physical/mental disability(s) including, but not limited to: major depression, among other
28 related conditions and/or disabilities.

1 65. At all times relevant herein, Plaintiff was able to perform the essential functions of
2 Plaintiff's job either with and/or without reasonable accommodations.

3 66. On a severe and/or pervasive basis during Plaintiff's employment with Defendant
4 LACMTA, continuing through July 1, 2020, and continuing, Defendants and DOES 1 through
5 100, and each of them, harassed Plaintiff due to and substantially motivated by Plaintiff's
6 actual/perceived disabilities leave through the following actions, among others:

7 a) In or around July 2018, Plaintiff took a medical leave of absence due to major
8 depression, which he had been previously been diagnosed with, and which Defendant
9 LACMTA was on notice, per an email from Plaintiff to Manager Ambrozich.

10 b) Upon Plaintiff's return to work in or around June 2019 Defendant Cabornida was
11 put on notice of Plaintiff's disabilities.

12 c) Specifically, beginning on or about June 22, 2019 Defendant Cabornida began
13 demanding whether Plaintiff can work overtime, to which Plaintiff stated to him he was
14 unable to due to his disabilities, using the specific phrase that he did not want to get
15 "burnout."

16 d) Thereafter, on a severe and/or pervasive basis, Defendant Cabornida began
17 making harassing comments towards Plaintiff and to Plaintiff's co-workers due in
18 substantial part to his disabilities.

19 e) For instance, on or about June 22, 2019 Defendant Cabornida made a comment to
20 Tuan Nguyen in front of Plaintiff, "You're hardcore, and you don't get *burnout* from
21 working overtime," using the same phrase Plaintiff had initially used in regards to his
22 disabilities to harass Plaintiff.

23 f) Thereafter, Plaintiff was told by his co-worker Mai Cowart that she had worked
24 overtime during the past week because Defendant Cabornida told her that Tuan Nguyen
25 was "*burnout*," again using the same phrase Plaintiff had used in order to harass
26 Plaintiff. However, Nguyen was present when Cowart showed up to work the overtime
27 shift.
28

1 g) On or about July 11, 2019, Defendant Cabornida once again pressured Plaintiff to
2 work overtime, which Plaintiff once again stated he could not due to his disabilities, at
3 which point Defendant Cabornida demanded Plaintiff come in to work overtime, which
4 Plaintiff refused.

5 h) Defendant Cabornida then unlawfully told Plaintiff it was his responsibility to
6 find someone to replace him on the overtime shift.

7 i) That same day, Plaintiff subsequently complained to Jessenia Rowe in the HEAR
8 department regarding Defendant Cabornida's severe and/or pervasive harassment due in
9 substantial part to his disabilities.

10 j) Moreover, in or around January 2020, as a result of his disabilities, Plaintiff
11 pursued a Workers' Compensation claim.

12 k) However, despite Defendant LACMTA's knowledge of Plaintiff's disability, and
13 status as transgender, Defendant LACMTA sent him to a therapist whose office was
14 located in a conversion therapy clinic, thereby exacerbating Plaintiff's disability.

15 l) Even worse, an entire wall of the waiting room where Plaintiff was left alone to
16 complete paperwork for over two hours prior to being seen was decorated with framed
17 book covers referencing the evils of homosexuality and promoting so-called "reparative
18 therapy."

19 m) When Plaintiff went into his evaluation, the doctor he spoke to, which Defendant
20 LACMTA referred him to obviously having knowledge that Plaintiff has major
21 depression, a disability, and is transgender, harassed Plaintiff about the following:

- 22 i. About Plaintiff' plans (or lack thereof) for genital surgery;
- 23 ii. Expressed skepticism regarding the number of trans people today as
24 opposed to 30 years ago;
- 25 iii. Asked what Plaintiff name was previously;
- 26 iv. Asked which gender(s) Plaintiff was attracted to; and
- 27 v. Spoke about Dr. John Money as a respected researcher (Money claimed
28 that gender identity is primarily learned, not innate).

1 n) As a result of Defendant LACMTA's referral of Plaintiff to a doctor located in a
2 conversion therapy office, and despite its knowledge of Plaintiff's disability and
3 Plaintiff's status as transgender, Plaintiff was harassed and suffered an exacerbation of
4 his disability.

5 o) Plaintiff was treated differently, disparately, and negatively because of his
6 actual/perceived disabilities, including but not limited to Defendants harassing Plaintiff
7 (as aforesaid), denying Plaintiff opportunities, unfairly disciplining Plaintiff, overly
8 monitoring and scrutinizing Plaintiff, and denying Plaintiff benefits.

9 p) At least through July 1, 2020, and continuing, Defendant LACMTA and DOES 1
10 through 100, and each of them, failed and/or refused to rehire/reinstate Plaintiff and/or
11 offer Plaintiff employment in any capacity or investigate Plaintiff's complaints and take
12 appropriate remedial actions.

13 67. In doing the acts alleged herein, Defendants Cabornida and LACMTA, and DOES 1
14 through 100, and each of them, were substantially motivated by Plaintiff's actual/perceived
15 disabilities, need for accommodations, and/or need for legally protected finite medical leave.

16 68. A reasonable person in Plaintiff's circumstances would have considered the work
17 environment to be hostile or abusive.

18 69. Plaintiff considered the work environment to be hostile or abusive towards Plaintiff.

19 70. At all times relevant herein, Plaintiff believes and further alleges that Defendants
20 Cabornida and LACMTA, and/or DOES 1 through 100, and/or its agents/representatives failed to
21 timely, properly, and/or completely investigate the harassment Plaintiff was routinely subjected
22 to and ratified and condoned the unlawful behavior.

23 71. The acts and conduct of Defendants Cabornida and LACMTA, and DOES 1 through 100,
24 and each of them, as aforesaid, were in violation of Cal. Government Code §§ 12940 et seq. Said
25 statutes impose certain duties upon Defendants concerning harassment against persons, such as
26 Plaintiff, on the basis of actual/perceived disabilities and the prohibition of actual/perceived
27 disability harassment. Said statutes were intended to prevent the type of disability and damage
28 herein set forth.

1 72. By the acts and conduct described above, Defendants Cabornida and LACMTA, and
2 DOES 1 through 100, and each of them, in violation of said statutes, knew about, or should have
3 known about, and failed to investigate and/or properly investigate, prevent or remedy the
4 disability harassment.

5 73. Prior to the initiation of this lawsuit, Plaintiff filed a timely complaint against each named
6 Defendant with the DFEH pursuant to Cal. Government Code § 12900 et seq. and has received
7 Right-to-Sue notices in a California Superior Court pursuant to California Government Code §
8 12965(b). Attached hereto and incorporated herein as Exhibit “A” are said Complaints and by
9 reference hereto are made a part hereof. Attached hereto and incorporated herein as Exhibit “B”
10 are said Right-to-Sue notices and by reference hereto are made a part hereof. Plaintiff has
11 therefore exhausted Plaintiff’s administrative remedies under the California Government Code.

12 74. As a direct and legal result of the acts and omissions of Defendants Cabornida and
13 LACMTA, and DOES 1 through 100, and each of them, Plaintiff was rendered sick, sore, lame,
14 disabled and/or disordered, both internally and/or externally, and/or suffered, among other
15 things, numerous internal injuries, severe fright, shock, pain, discomfort and/or anxiety.

16 75. As a further legal result of the acts and omissions of Defendants Cabornida and
17 LACMTA, and DOES 1 through 100, and each of them, Plaintiff has been forced and/or will be
18 forced to incur expenses for medical care, X-rays, and/or laboratory costs during the period of
19 Plaintiff’s disability, and/or is informed and believes, and thereon alleges, that Plaintiff will in
20 the future be forced to incur additional expenses of the same nature, all in an amount which is at
21 present unknown. Plaintiff will pray leave of court to show the exact amount of said expenses at
22 the time of trial.

23 76. Prior to the occurrence of the incidents, Plaintiff was an able-bodied individual, but since
24 said incidents has been unable to engage fully and/or partially in Plaintiff’s occupation, and is
25 informed and believes, and thereon alleges, that Plaintiff will be fully and/or partially
26 incapacitated and/or unable to perform Plaintiff’s usual work for an indefinite period of time in
27 the future, all to Plaintiff’s damage in an amount which is at present unascertained. Plaintiff will
28 pray leave of court to show the total amount of loss of earnings at the time of trial.

1 77. As a further direct and legal result of the acts and conduct of Defendants Cabornida and
2 LACMTA, and DOES 1 through 100, and each of them, Plaintiff has been caused, and did
3 suffer, and continues to suffer severe and permanent emotional and/or mental distress and/or
4 anguish, humiliation, embarrassment, fright, shock, pain, discomfort and/or anxiety. The exact
5 nature and extent of said injuries is presently unknown to Plaintiff, who will pray leave of court
6 to assert the same when they are ascertained.

7 78. The aforementioned acts of Defendants Cabornida and DOES 1 through 100, and each of
8 them, were willful, wanton, malicious, intentional, oppressive and/or despicable and were done
9 in willful and conscious disregard of the rights, welfare and safety of Plaintiff, thereby justifying
10 the awarding of punitive and exemplary damages against Defendant Cabornida and DOES 1
11 through 100, and each of them, in an amount to be determined at the time of trial pursuant to
12 California Civil Code § 3294(a) and (b).

13 79. By the aforesaid acts and conduct of Defendants Cabornida and LACMTA, and DOES 1
14 through 100, and each of them, Plaintiff has been directly and legally caused to suffer actual
15 damages pursuant to California Civil Code § 3333 including, but not limited to, loss of earnings
16 and future earning capacity, medical and related expenses for care and procedures both now and
17 in the future, attorneys' fees, and other pecuniary loss not presently ascertained, for which
18 Plaintiff will seek leave of court to amend when ascertained.

19 80. As a result of the harassing acts of Defendants Cabornida and LACMTA, and DOES 1
20 through 100, and each of them, as alleged herein, Plaintiff is entitled to reasonable attorneys'
21 fees and costs of said suit as specifically provided in California Government Code § 12965(b).

22 81. The FEHA also provides remedies, including but not limited to, declaratory and
23 injunctive relief. As such, Plaintiff is entitled to both declaratory and injunctive relief as a result
24 of Defendants' unlawful conduct.

25 82. Plaintiff has been damaged in an amount within the jurisdictional limits of this Court.

26 ///

27 ///

28 ///

V.

FIFTH CAUSE OF ACTION

For Actual/Perceived Disability Discrimination in Employment

[California Government Code § 12940 et. seq.]

Against LACMTA & DOES 1 Through 100, Only

83. At all times relevant herein, Plaintiff was an actual, perceived, and/or potentially disabled person within the meaning of Cal. Gov. Code §§ 12926.1(b) et seq., because Plaintiff was a person with an actual, perceived, potentially disabling, and/or potentially disabling in the future physical/mental disability(s) including, but not limited to: major depression, among other related conditions and/or disabilities.

84. At all times relevant herein, Defendant LACMTA and DOES 1 through 100, and each of them, had notice of Plaintiff's disabilities and/or need for accommodations. For example, Plaintiff notified Manager Ambrozich via email of his disabilities, including major depression and other related conditions, and need for medical leave,.

85. Plaintiff's impairments affect his musculoskeletal body system and ability to perform major life activities, such as working.

86. At all times relevant herein, as an employee disabled by a severe and debilitating disability, Plaintiff was a member of a protected class.

87. At all times relevant herein, Plaintiff was qualified for and/or competently performed the position(s) held throughout his employment with Defendant LACMTA and DOES 1 through 100, and each of them.

88. At all times relevant herein, Plaintiff was able to perform the essential functions of his job either with and/or without reasonable accommodations.

89. Starting during Plaintiff's employment with Defendant LACMTA and DOES 1 through 100, and each of them, and continuing through at least July 1, 2020, and continuing, as a result of and substantially motivated by Plaintiff's actual/perceived disabilities, Defendant LACMTA and DOES 1 through 100, and each of them, subjected Plaintiff to discriminatory treatment and/or adverse employment actions, including the following actions, among others:

1 a) In or around July 2018, Plaintiff was forced to take a medical leave of absence
2 due to major depression, which he had been previously been diagnosed with, and which
3 Defendant LACMTA was on notice, per an email from Plaintiff to Manager Ambrozich.

4 b) Upon Plaintiff's return to work in or around June 2019 Defendant Cabornida was
5 put on notice of Plaintiff's disabilities.

6 c) Specifically, beginning on or about June 22, 2019 Defendant Cabornida began
7 asking whether Plaintiff can work overtime, to which Plaintiff stated to him he was
8 unable to due to his disabilities, using the specific phrase that he did not want to get
9 "burnout."

10 d) Thereafter, on a severe and/or pervasive basis, Defendant Cabornida began
11 making harassing comments towards Plaintiff and to Plaintiff's co-workers due in
12 substantial part to his disabilities.

13 e) For instance, on or about June 22, 2019 Defendant Cabornida made a comment to
14 Tuan Nguyen in front of Plaintiff, "You're hardcore, and you don't get *burnout* from
15 working overtime," using the same phrase Plaintiff had initially used in regards to his
16 disabilities to harass Plaintiff, directly evidencing his discriminatory animus.

17 f) Thereafter, Plaintiff was told by his co-worker Mai Cowart that she had worked
18 overtime during the past week because Defendant Cabornida told her that Tuan Nguyen
19 was "*burnout*," again using the same phrase Plaintiff had used in order to harass
20 Plaintiff. However, Nguyen was present when Cowart showed up to work the overtime
21 shift, which directly evidences Defendant Cabornida's discriminatory animus.

22 g) On or about July 11, 2019, Defendant Cabornida once again pressured Plaintiff to
23 work overtime, which Plaintiff once again stated he could not due to his disabilities, at
24 which point Defendant Cabornida demanded Plaintiff come in to work overtime, which
25 Plaintiff refused.

26 h) Defendant Cabornida then unlawfully told Plaintiff it was his responsibility to
27 find someone to replace him on the overtime shift, directly evidencing his discriminatory
28 animus.

1 i) That same day, Plaintiff subsequently complained to Jessenia Rowe in the HEAR
2 department regarding Defendant Cabornida's severe and/or pervasive harassment due in
3 substantial part to his disabilities.

4 j) However, Jessenia Rowe did nothing to remediate the harassment and
5 discrimination that Plaintiff was facing based in substantial part on his disabilities,
6 thereby ratifying and condoning said unlawful conduct and comments by Defendant
7 Cabornida.

8 k) Moreover, in or around January 2020, as a result of his disabilities, Plaintiff
9 pursued a Workers' Compensation claim.

10 l) However, despite Defendant LACMTA's knowledge of Plaintiff's disability, and
11 status as transgender, Defendant LACMTA sent him to a therapist whose office was
12 located in a conversion therapy clinic, thereby exacerbating Plaintiff's disability.

13 m) Even worse, an entire wall of the waiting room where Plaintiff was left alone to
14 complete paperwork for over two hours prior to being seen was decorated with framed
15 book covers referencing the evils of homosexuality and promoting so-called "reparative
16 therapy."

17 n) When Plaintiff went into his evaluation, the doctor he spoke to, which Defendant
18 LACMTA referred him to obviously having knowledge that Plaintiff has major
19 depression, a disability, and is transgender, harassed Plaintiff about the following:

- 20 i. About Plaintiff' plans (or lack thereof) for genital surgery;
- 21 ii. Expressed skepticism regarding the number of trans people today as
22 opposed to 30 years ago;
- 23 iii. Asked what Plaintiff name was previously;
- 24 iv. Asked which gender(s) Plaintiff was attracted to; and
- 25 v. Spoke about Dr. John Money as a respected researcher (Money claimed
26 that gender identity is primarily learned, not innate).

27 o) As a result of Defendant LACMTA's referral of Plaintiff to a doctor located in a
28 conversion therapy office, and despite its knowledge of Plaintiff's disability and

1 Plaintiff's status as transgender, Plaintiff was harassed and suffered an exacerbation of
2 his disability.

3 p) Plaintiff was treated differently, disparately, and negatively because of his
4 actual/perceived disabilities, including but not limited to Defendants harassing Plaintiff
5 (as aforesaid), denying Plaintiff opportunities, unfairly disciplining Plaintiff, overly
6 monitoring and scrutinizing Plaintiff, and denying Plaintiff benefits.

7 q) At least through July 1, 2020, and continuing, Defendant LACMTA and DOES 1
8 through 100, and each of them, failed and/or refused to rehire/reinstate Plaintiff and/or
9 offer Plaintiff employment in any capacity or investigate Plaintiff's complaints and take
10 appropriate remedial actions.

11 90. In doing the acts alleged herein, Defendant LACMTA and DOES 1 through 100, and
12 each of them, were substantially motivated by Plaintiff's actual/perceived disabilities.

13 91. At all times relevant herein, Plaintiff believes and further alleges that Defendant
14 LACMTA and DOES 1 through 100, and each of them, and/or its agents/representatives failed to
15 timely, properly, and/or completely investigate the discrimination Plaintiff was routinely
16 subjected to and ratified and condoned the unlawful behavior.

17 92. The acts and conduct of Defendant LACMTA, and DOES 1 through 100, and each of
18 them, as aforesaid, were in violation of Cal. Gov. Code §§ 12940 et seq. Said statutes impose
19 certain duties upon Defendant LACMTA and DOES 1 through 100, and each of them,
20 concerning discrimination against persons, such as Plaintiff, on the basis of disabilities and the
21 prohibition of disability discrimination. Said statutes were intended to prevent the type of injury
22 and damage herein set forth.

23 93. By the acts and conduct described above, Defendant LACMTA and DOES 1 through
24 100, and each of them, in violation of said statutes, knew about, or should have known about,
25 and failed to investigate and/or properly investigate, prevent or remedy the actual/perceived
26 disability discrimination. When Plaintiff was discriminated against, Plaintiff's actual/perceived
27 disability(s) were substantial motivating reasons and/or factors in Defendant LACMTA's
28 conduct.

1 94. Prior to the initiation of this lawsuit, Plaintiff filed a timely complaint against each named
2 Defendant with the DFEH pursuant to Cal. Government Code § 12900 et seq. and has received
3 Right-to-Sue notices in a California Superior Court pursuant to California Government Code §
4 12965(b). Attached hereto and incorporated herein as Exhibit “A” are said Complaints and by
5 reference hereto are made a part hereof. Attached hereto and incorporated herein as Exhibit “B”
6 are said Right-to-Sue notices and by reference hereto are made a part hereof. Plaintiff has
7 therefore exhausted Plaintiff’s administrative remedies under the California Government Code.

8 95. As a direct and legal result of the acts and omissions of Defendant LACMTA and DOES
9 1 through 100, Plaintiff was rendered sick, sore, lame, disabled and/or disordered, both internally
10 and/or externally, and/or suffered, among other things, numerous internal injuries, severe fright,
11 shock, pain, discomfort and/or anxiety.

12 96. As a further legal result of the acts and omissions of Defendant LACMTA and DOES 1
13 through 100, and each of them, Plaintiff has been forced and/or will be forced to incur expenses
14 for medical care, X-rays, and/or laboratory costs during the period of Plaintiff’s disability, and/or
15 is informed and believes, and thereon alleges, that Plaintiff will in the future be forced to incur
16 additional expenses of the same nature, all in an amount which is at present unknown. Plaintiff
17 will pray leave of court to show the exact amount of said expenses at the time of trial.

18 97. Prior to the occurrence of the incidents, Plaintiff was an able-bodied individual, but since
19 said incidents has been unable to engage fully and/or partially in Plaintiff’s occupation, and is
20 informed and believes, and thereon alleges, that Plaintiff will be fully and/or partially
21 incapacitated and/or unable to perform Plaintiff’s usual work for an indefinite period of time in
22 the future, all to Plaintiff’s damage in an amount which is at present unascertained. Plaintiff will
23 pray leave of court to show the total amount of loss of earnings at the time of trial.

24 98. As a further direct and legal result of the acts and conduct of Defendant LACMTA and
25 DOES 1 through 100, and each of them, Plaintiff has been caused, and did suffer, and continues
26 to suffer severe and permanent emotional and/or mental distress and/or anguish, humiliation,
27 embarrassment, fright, shock, pain, discomfort and/or anxiety. The exact nature and extent of
28

1 said injuries is presently unknown to Plaintiff, who will pray leave of court to assert the same
2 when they are ascertained.

3 99. By the aforesaid acts and conduct of Defendant LACMTA and DOES 1 through 100, and
4 each of them, Plaintiff has been directly and legally caused to suffer actual damages pursuant to
5 California Civil Code § 3333 including, but not limited to, loss of earnings and future earning
6 capacity, medical and related expenses for care and procedures both now and in the future,
7 attorneys' fees, and other pecuniary loss not presently ascertained, for which Plaintiff will seek
8 leave of court to amend when ascertained.

9 100. As a result of the discriminatory acts of Defendant LACMTA and DOES 1 through 100,
10 and each of them, as alleged herein, Plaintiff is entitled to reasonable attorneys' fees and costs of
11 said suit as specifically provided in California Government Code § 12965(b).

12 101. The FEHA also provides remedies, including but not limited to, declaratory and
13 injunctive relief. As such, Plaintiff is entitled to both declaratory and injunctive relief as a result
14 of the unlawful conduct of LACMTA and DOES 1 through 100, and each of them.

15 102. Plaintiff has been damaged in an amount within the jurisdictional limits of this Court.

16 **VI.**

17 **SIXTH CAUSE OF ACTION**

18 **For Actual/Perceived Disability Retaliation in Employment**

19 **[California Government Code §§ 12940 et seq.]**

20 **Against Defendant LACMTA & DOES 1 Through 100, Only**

21 103. Plaintiff incorporates herein by reference and re-alleges each and every paragraph in this
22 Complaint as though duly set forth in full herein.

23 104. Plaintiff was, at all times material hereto, a disabled employee (and one who engaged in
24 legally protected conduct) and within a protected class covered by Cal. Gov. Code § 12940, as
25 Plaintiff suffered from a severe and debilitating disability, including anxiety and depression,
26 among other related conditions and/or disabilities.

27 105. Starting during Plaintiff's employment with Defendant LACMTA, continuing at least
28 through July 1, 2020, and continuing, Defendant LACMTA and DOES 1 through 100, and each

1 of them, retaliated against Plaintiff as a result of Plaintiff asserting his legal rights and/or
2 complaining about and/or protesting against the disability harassment and discrimination
3 Plaintiff was subjected to.

4 106. Plaintiff asserted his legal rights, for example partaking in protected activity and
5 protesting and complaining, on the following occasions, among others:

6 a) In or around July 2018, Plaintiff took a medical leave of absence due to major
7 depression, which he had been previously been diagnosed with, and which Defendant
8 LACMTA was on notice, per an email from Plaintiff to Manager Ambrozich.

9 b) Beginning on or about June 22, 2019 Defendant Cabornida began asking whether
10 Plaintiff can work overtime, to which Plaintiff protested to him he was unable to due to
11 his disabilities, using the specific phrase that he did not want to get “burnout.”

12 c) On or about July 11, 2019, Defendant Cabornida once again pressured Plaintiff to
13 work overtime, which Plaintiff once again complained he could not due to his disabilities,
14 at which point Defendant Cabornida demanded Plaintiff come in to work overtime, which
15 Plaintiff refused.

16 d) That same day, Plaintiff subsequently complained to Jessenia Rowe in the HEAR
17 department regarding Defendant Cabornida’s severe and/or pervasive harassment due in
18 substantial part to his disabilities.

19 e) On or about June 2, 2020, Plaintiff sent Defendants a Notice of Claims Letter and
20 Request for Employment Records, outlining in detail his potential claims against
21 Defendants, including his claims regarding disability harassment, discrimination, and
22 retaliation.

23 107. However, Defendant LACMTA and DOES 1 through 100, and each of them, retaliated
24 against Plaintiff, due to and substantially motivated by Plaintiff’s actual/perceived disability(s),
25 requesting accommodations, or protected finite leave, and/or due to Plaintiff engaging in the
26 aforesaid legally protected activities (complaints/protests), through the following actions, among
27 others:
28

1 a) In or around July 2018, Plaintiff took a medical leave of absence due to major
2 depression, which he had been previously been diagnosed with, and which Defendant
3 LACMTA was on notice, per an email from Plaintiff to Manager Ambrozich.

4 b) Upon Plaintiff's return to work in or around June 2019 Defendant Cabornida was
5 put on notice of Plaintiff's disabilities.

6 c) Specifically, beginning on or about June 22, 2019 Defendant Cabornida began
7 asking whether Plaintiff can work overtime, to which Plaintiff stated to him he was
8 unable to due to his disabilities, using the specific phrase that he did not want to get
9 "burnout."

10 d) Thereafter, on a severe and/or pervasive basis, Defendant Cabornida began
11 making harassing comments towards Plaintiff and to Plaintiff's co-workers due in
12 substantial part to his disabilities.

13 e) For instance, on or about June 22, 2019 Defendant Cabornida made a comment to
14 Tuan Nguyen in front of Plaintiff, "You're hardcore, and you don't get *burnout* from
15 working overtime," using the same phrase Plaintiff had initially used in regards to his
16 disabilities to harass Plaintiff, directly evidencing his retaliatory animus.

17 f) Thereafter, Plaintiff was told by his co-worker Mai Cowart that she had worked
18 overtime during the past week because Defendant Cabornida told her that Tuan Nguyen
19 was "*burnout*," again using the same phrase Plaintiff had used in order to harass
20 Plaintiff. However, Nguyen was present when Cowart showed up to work the overtime
21 shift, which directly evidences Defendant Cabornida's retaliatory animus.

22 g) On or about July 11, 2019, Defendant Cabornida once again pressured Plaintiff to
23 work overtime, which Plaintiff once again stated he could not due to his disabilities, at
24 which point Defendant Cabornida demanded Plaintiff come in to work overtime, which
25 Plaintiff refused.

26 h) Defendant Cabornida then unlawfully told Plaintiff it was his responsibility to
27 find someone to replace him on the overtime shift, directly evidencing his retaliatory
28 animus.

1 i) However, Jessenia Rowe did nothing to remediate the harassment and
2 discrimination that Plaintiff was facing based in substantial part on his disabilities,
3 thereby ratifying and condoning said unlawful conduct and comments by Defendant
4 Cabornida, directly evidencing her retaliatory animus.

5 j) Moreover, in or around January 2020, as a result of his disabilities, Plaintiff
6 pursued a Workers' Compensation claim.

7 k) However, despite Defendant LACMTA's knowledge of Plaintiff's disability, and
8 status as transgender, Defendant LACMTA sent him to a therapist whose office was
9 located in a conversion therapy clinic, thereby exacerbating Plaintiff's disability, and
10 directly evidencing Defendant LACMTA's retaliatory animus.

11 l) Even worse, an entire wall of the waiting room where Plaintiff was left alone to
12 complete paperwork for over two hours prior to being seen was decorated with framed
13 book covers referencing the evils of homosexuality and promoting so-called "reparative
14 therapy."

15 m) When Plaintiff went into his evaluation, the doctor he spoke to, which Defendant
16 LACMTA referred him to obviously having knowledge that Plaintiff has major
17 depression, a disability, and is transgender, harassed Plaintiff about the following:

18 i. About Plaintiff' plans (or lack thereof) for genital surgery;

19 ii. Expressed skepticism regarding the number of trans people today as
20 opposed to 30 years ago;

21 iii. Asked what Plaintiff name was previously;

22 iv. Asked which gender(s) Plaintiff was attracted to; and

23 v. Spoke about Dr. John Money as a respected researcher (Money claimed
24 that gender identity is primarily learned, not innate).

25 n) As a result of Defendant LACMTA's referral of Plaintiff to a doctor located in a
26 conversion therapy office, and despite its knowledge of Plaintiff's disability and
27 Plaintiff's status as transgender, Plaintiff was harassed and suffered an exacerbation of
28 his disability.

1 o) Plaintiff was treated differently, disparately, and negatively because of his
2 actual/perceived disabilities, including but not limited to Defendants harassing Plaintiff
3 (as aforesaid), denying Plaintiff opportunities, unfairly disciplining Plaintiff, overly
4 monitoring and scrutinizing Plaintiff, and denying Plaintiff benefits.

5 p) At least through July 1, 2020, and continuing, Defendant LACMTA and DOES 1
6 through 100, and each of them, failed and/or refused to rehire/reinstate Plaintiff and/or
7 offer Plaintiff employment in any capacity or investigate Plaintiff's complaints and take
8 appropriate remedial actions.

9 108. In doing the acts alleged herein, Defendant LACMTA and DOES 1 through 100, and
10 each of them, were substantially motivated by Plaintiff's actual/perceived disabilities, need for
11 accommodations, need for legally protected medical leave, and/or aforesaid legally protected
12 activities (complaints/protests).

13 109. At all times relevant herein, Plaintiff believes and further alleges that Defendant
14 LACMTA and DOES 1 through 100, and each of them, and/or its agents/representatives failed to
15 timely, properly, and/or completely investigate the retaliation Plaintiff was routinely subjected to
16 and ratified and condoned the unlawful behavior.

17 110. The acts and conduct of Defendant LACMTA and DOES 1 through 100, and each of
18 them, as aforesaid, were in violation of California Government Code §§ 12940 et seq. Said
19 statutes impose certain duties upon Defendant LACMTA and DOES 1 through 100, and each of
20 them, concerning retaliation against persons, such as Plaintiff, on the basis of disabilities and the
21 prohibition of actual/perceived disability retaliation. Said statutes were intended to prevent the
22 type of injury and damage herein set forth.

23 111. By the acts and conduct described above, Defendant LACMTA and DOES 1 through
24 100, and each of them, in violation of said statutes, knew about, or should have known about,
25 and failed to investigate and/or properly investigate, prevent or remedy the disability retaliation.
26 When Plaintiff was retaliated against, Plaintiff's disability(s) and/or complaints about the
27 unlawful conduct were substantial motivating reasons and/or factors in Defendant LACMTA's
28 conduct.

1 112. Prior to the initiation of this lawsuit, Plaintiff filed a timely complaint against each named
2 Defendant with the DFEH pursuant to Cal. Government Code § 12900 et seq. and has received
3 Right-to-Sue notices in a California Superior Court pursuant to California Government Code §
4 12965(b). Attached hereto and incorporated herein as Exhibit “A” are said Complaints and by
5 reference hereto are made a part hereof. Attached hereto and incorporated herein as Exhibit “B”
6 are said Right-to-Sue notices and by reference hereto are made a part hereof. Plaintiff has
7 therefore exhausted Plaintiff’s administrative remedies under the California Government Code.

8 113. As a direct and legal result of the acts and omissions of Defendant LACMTA and DOES
9 1 through 100, and each of them, Plaintiff was rendered sick, sore, lame, disabled and/or
10 disordered, both internally and/or externally, and/or suffered, among other things, numerous
11 internal injuries, severe fright, shock, pain, discomfort and/or anxiety.

12 114. As a further legal result of the acts and omissions of Defendant LACMTA and DOES 1
13 through 100, and each of them, Plaintiff has been forced and/or will be forced to incur expenses
14 for medical care, X-rays, and/or laboratory costs during the period of Plaintiff’s disability, and/or
15 is informed and believes, and thereon alleges, that Plaintiff will in the future be forced to incur
16 additional expenses of the same nature, all in an amount which is at present unknown. Plaintiff
17 will pray leave of court to show the exact amount of said expenses at the time of trial.

18 115. Prior to the occurrence of the incidents, Plaintiff was an able-bodied individual, but since
19 said incidents has been unable to engage fully and/or partially in Plaintiff’s occupation, and is
20 informed and believes, and thereon alleges, that Plaintiff will be fully and/or partially
21 incapacitated and/or unable to perform Plaintiff’s usual work for an indefinite period of time in
22 the future, all to Plaintiff’s damage in an amount which is at present unascertained. Plaintiff will
23 pray leave of court to show the total amount of loss of earnings at the time of trial.

24 116. As a further direct and legal result of the acts and conduct of Defendant LACMTA and
25 DOES 1 through 100, and each of them, Plaintiff has been caused, and did suffer, and continues
26 to suffer severe and permanent emotional and/or mental distress and/or anguish, humiliation,
27 embarrassment, fright, shock, pain, discomfort and/or anxiety. The exact nature and extent of
28

1 said injuries is presently unknown to Plaintiff, who will pray leave of court to assert the same
2 when they are ascertained.

3 117. By the aforesaid acts and conduct of Defendant LACMTA and DOES 1 through 100, and
4 each of them, Plaintiff has been directly and legally caused to suffer actual damages pursuant to
5 California Civil Code § 3333 including, but not limited to, loss of earnings and future earning
6 capacity, medical and related expenses for care and procedures both now and in the future,
7 attorneys' fees, and other pecuniary loss not presently ascertained, for which Plaintiff will seek
8 leave of court to amend when ascertained.

9 118. As a result of the retaliatory acts of Defendant LACMTA and DOES 1 through 100, and
10 each of them, as alleged herein, Plaintiff is entitled to reasonable attorneys' fees and costs of said
11 suit as specifically provided in California Government Code § 12965(b).

12 119. The FEHA also provides remedies, including but not limited to, declaratory and
13 injunctive relief. As such, Plaintiff is entitled to both declaratory and injunctive relief as a result
14 of the unlawful conduct of LACMTA and DOES 1 through 100, and each of them.

15 120. Plaintiff has been damaged in an amount within the jurisdictional limits of this Court.

16 **VII.**

17 **SEVENTH CAUSE OF ACTION**

18 **For Whistleblower Violations**

19 **[California Labor Code § 1102.5]**

20 **Against Defendant LACMTA & DOES 1 Through 100, Only**

21 121. Plaintiff incorporates herein by reference each and every paragraph in this Complaint as
22 though duly set forth in full herein.

23 122. Defendant LACMTA and DOES 1 through 100, and each of them, retaliated against
24 Plaintiff for blowing the whistle/complaining about/protesting against its unlawful activities,
25 including but not limited to sex/gender, gender identity or expression, transgender, and/or sexual
26 orientation harassment, discrimination, and retaliation, where Plaintiff had reasonable cause to
27 believe Plaintiff's employer was violating the law.

28 123. It is a violation of the California whistleblower statute, Cal. Labor Code § 1102.5, and

1 public policy to unlawfully retaliate/punish/discharge or deny opportunities to an employee for
2 refusing to violate the law and/or for protesting unlawful activities to a government agency or
3 his/her employer.

4 124. Plaintiff was a whistleblower pursuant to Cal. Labor Code § 1102.5, as Plaintiff engaged
5 in the following protected activities, among others:

6 a) In or around January 2016, Plaintiff informed LACMTA's EEO department –
7 specifically, Jonaura Wisdom – that he is transgender and identifies as male.

8 b) In or around July 2016, in response to witnessing Defendant Bergquist's violent
9 comments regarding Cynthia Rivera, an individual with a gender nonconforming
10 appearance and known to be non-heterosexual, Plaintiff lodged a formal written
11 complaint with Department Manager Ricardo Moran.

12 c) In or around December 2016 Plaintiff complained to Defendant Cabornida of the
13 harassing and discriminatory conduct and comments he was facing from Defendant
14 Bergquist on a severe and/or pervasive basis, of which Defendant Cabornida admitted he
15 had been aware.

16 d) In or around June 2019, Plaintiff then directly asked Defendant Bergquist whether
17 he had any plans to follow Supervisor Jones' instructions to brief him on the project, to
18 which Defendant Bergquist responded that Plaintiff could go look at the room in question
19 on his own if he wanted to.

20 e) Beginning on or about June 22, 2019 Defendant Cabornida began asking whether
21 Plaintiff can work overtime, to which Plaintiff protested to him he was unable to due to
22 his disabilities, using the specific phrase that he did not want to get "burnout."

23 f) Also on or about June 22, 2019, as a result, Plaintiff emailed Manager Ambrozich
24 and Supervisor Jones, protesting and asking to be relieved of responsibility for the project
25 and detailed why, including his fear of worsening discrimination by Defendant Bergquist.

26 g) Subsequently, on or about June 25, 2019, Plaintiff then escalated his complaints
27 to the Equal Employment Opportunity department at LACMTA to address the unlawful
28 harassment, discrimination, and retaliation he had been facing. However, the EEO

1 department referred Plaintiff to the HEAR department. Accordingly, Plaintiff began
2 documenting and sending emails to HEAR on a consistent basis as unlawful conduct
3 occurred in the workplace.

4 h) On or about July 11, 2019, Defendant Cabornida once again pressured Plaintiff to
5 work overtime, which Plaintiff once again complained he could not due to his disabilities,
6 at which point Defendant Cabornida demanded Plaintiff come in to work overtime, which
7 Plaintiff refused.

8 i) That same day, Plaintiff subsequently complained to Jessenia Rowe in the HEAR
9 department regarding Defendant Cabornida's severe and/or pervasive harassment due in
10 substantial part to his disabilities.

11 j) Towards the end of November 2019, during a job briefing in which employees
12 were criticized for being behind on relay testing, Plaintiff complained that they were not
13 being properly trained.

14 k) On or about November 28, 2019, Plaintiff complained to Jessenia Rowe in
15 Human Resources regarding the harassment and discrimination he was experiencing at
16 the hands of Defendant Bergquist on a severe and/or pervasive basis.

17 l) On or about December 3, 2019, Plaintiff again complained to Jessenia Rowe in
18 HR regarding the harassment and discrimination he was experiencing at the hands of
19 Defendant Bergquist on a severe and/or pervasive basis, specifically detailing in a
20 timeline his experiences.

21 m) Ultimately, due to the hostile work environment Plaintiff faced since his hiring by
22 LACMTA, Plaintiff pursued a Workers' Compensation claim in or around December
23 2019

24 n) On or about January 21, 2020, Plaintiff complained to LACMTA regarding the
25 incident at the conversion therapy clinic along with pictures as evidence.

26 o) On or about June 2, 2020, Plaintiff sent Defendants a Notice of Claims Letter and
27 Request for Employment Records, outlining in detail his potential claims against
28 Defendants.

1 125. However, as a direct result of Plaintiff engaging in legally protected activity and
2 complaining about and protesting against the aforesaid violations of law (or Plaintiff's
3 reasonable belief that laws were being violated), Defendant LACMTA and DOES 1 through 100,
4 and each of them, retaliated against Plaintiff through the following, among others:

5 a) In or around January 2016, shortly after Plaintiff informed Defendant LACMTA
6 of his transgender status, Defendant LACMTA held a meeting with its employees in
7 which it purposely intimidated its employees from asking questions regarding Plaintiff's
8 gender identity, creating a situation in which everyone knew Plaintiff was transgender but
9 treated him differently because they were afraid to say the wrong thing.

10 b) In or around June 2016, in an effort to intimidate Plaintiff due in substantial part
11 to his sex/gender, Defendant Bergquist commented about another employee, Cynthia
12 Rivera, an employee of which it is common knowledge within the department that is not
13 heterosexual, "If I had a chance, I would be happy to push [co-worker] Cynthia Rivera in
14 front of a high rail vehicle."

15 c) Critically, Ms. Rivera had a gender nonconforming appearance, thereby directly
16 evidencing Defendant Bergquist's retaliatory animus towards homosexual and/or
17 transgender, or gender nonconforming individuals. Additionally, Ms. Rivera had been
18 open about having a variety of gender nonconforming interests.

19 d) Department Manager Moran took no remedial or disciplinary action towards
20 Defendant Bergquist's harassing and discriminatory comments and therefore, Defendant
21 LACMTA, through its Department Manager, ratified and condoned Mr. Bergquist's
22 unlawful discriminatory and retaliatory conduct.

23 e) In or around August or September 2016, Plaintiff and his co-worker, Lawrence
24 Lee were assigned to be trained by Defendant Bergquist at Union Station.

25 i. Defendant Bergquist took care to slowly walk Mr. Lee through the
26 training, making sure to thoroughly explain everything to him and ensure Mr. Lee
27 had an understanding of what was supposed to be done.
28

1 ii. When it came to Plaintiff’ part of the training, Defendant Bergquist simply
2 left Plaintiff’s presence with Mr. Lee to discuss blueprints, knowing that Plaintiff
3 had no knowledge of how to perform the tasks he was supposed to, since
4 Defendant Bergquist was supposed to be training him on said tasks.

5 iii. Rather, when Plaintiff approached Defendant Bergquist for assistance, Mr.
6 Bergquist began yelling at and insulting Plaintiff in front of his co-worker, in an
7 effort to belittle Plaintiff, based in substantial part on his sex/gender, gender
8 identity or expression, his being transgender, and/or sexual orientation.

9 f) Indeed, Defendant Bergquist went out of his way to continually harass Plaintiff on
10 a severe and/or pervasive basis, directly evidencing his retaliatory animus based on
11 Plaintiff’s complaints of his unlawful conduct.

12 g) Moreover, Lawrence Lee stated to Plaintiff, “You are going to be stuck with
13 [Defendant Bergquist] forever,” laughing.

14 h) Rather than stop the harassment and discrimination of Plaintiff upon being
15 informed of it, Defendant Cabornida stated to Plaintiff, “My only responsibility is to
16 manage work, not interpersonal relationships, and [Defendant Bergquist] is not violating
17 any policies,” thereby directly evidencing his retaliatory animus based on Plaintiff’s
18 complaints of his unlawful conduct.

19 i) However, this was untrue, as Defendant LACMTA has a claimed anti-harassment
20 and anti-bullying policy, which was clearly being violated, as evidenced by Defendant
21 Cabornida’s aforesaid admission.

22 j) As such, Defendant LACMTA was put on notice of FEHA and other policy
23 violations, and ratified and condoned the unlawful harassment, discrimination, and
24 retaliation that Plaintiff was facing due in substantial part to his sex/gender, transgender,
25 gender identity or expression, sexual orientation, and related complaints thereto.

26 k) In or around late 2016, Defendant Bergquist began refusing to tell Plaintiff and
27 Cynthia Rivera what their assignments were but would tell all the other employees under
28 him what their assignments were, directly evidencing his retaliatory animus based on

1 Plaintiff's complaints of his unlawful conduct. This forced Plaintiff to have to ask around
2 to simply find out what he was supposed to do.

3 l) In addition, Lawrence Lee would not show up for job assignments but would
4 never face disciplinary action, while Plaintiff regularly faced scrutiny and being overly
5 monitored as a biased personnel management decision on a severe and/or pervasive basis,
6 directly evidencing Defendant Bergquist's retaliatory animus based on Plaintiff's
7 complaints of his unlawful conduct.

8 m) In or around February 2017, Plaintiff was working on an independent capital
9 improvement project under the direction of Manager Gary Ambrozich.

10 n) Defendant Bergquist went out of his way to go to the location where Plaintiff was
11 working, and as a biased personnel management decision, scrutinize and monitor his
12 work, and subsequently tell Manager Ambrozich that Plaintiff did something wrong in
13 order to further harass Plaintiff, even though Defendant Bergquist was not Plaintiff's
14 direct supervisor at that time.

15 o) Defendant Bergquist's biased personnel management decision to not address the
16 issue he found and to circumvent Plaintiff to go directly to Manager Ambrozich is direct
17 evidence of Defendant Bergquist's retaliatory animus based on Plaintiff's complaints of
18 his unlawful conduct.

19 p) In or around July 2018, Plaintiff took a medical leave of absence due to major
20 depression, which he had been previously been diagnosed with, and which Defendant
21 LACMTA was on notice, per an email from Plaintiff to Manager Ambrozich.

22 q) Upon Plaintiff's return to work in or around June 2019 Defendant Cabornida was
23 put on notice of Plaintiff's disabilities.

24 r) Specifically, beginning on or about June 22, 2019 Defendant Cabornida began
25 asking whether Plaintiff can work overtime, to which Plaintiff stated to him he was
26 unable to due to his disabilities, using the specific phrase that he did not want to get
27 "burnout."
28

1 s) Thereafter, on a severe and/or pervasive basis, Defendant Cabornida began
2 making harassing comments towards Plaintiff and to Plaintiff's co-workers due in
3 substantial part to his disabilities.

4 t) For instance, on or about June 22, 2019 Defendant Cabornida made a comment to
5 Tuan Nguyen in front of Plaintiff, "You're hardcore, and you don't get *burnout* from
6 working overtime," using the same phrase Plaintiff had initially used in regards to his
7 disabilities to harass Plaintiff, directly evidencing his retaliatory animus based on
8 Plaintiff's complaints of his unlawful conduct.

9 u) Thereafter, Plaintiff was told by his co-worker Mai Cowart that she had worked
10 overtime during the past week because Defendant Cabornida told her that Tuan Nguyen
11 was "*burnout*," again using the same phrase Plaintiff had used in order to harass
12 Plaintiff. However, Nguyen was present when Cowart showed up to work the overtime
13 shift, which directly evidences Defendant Cabornida's retaliatory animus based on
14 Plaintiff's complaints of his unlawful conduct.

15 v) On or about July 11, 2019, Defendant Cabornida once again pressured Plaintiff to
16 work overtime, which Plaintiff once again stated he could not due to his disabilities, at
17 which point Defendant Cabornida demanded Plaintiff come in to work overtime, which
18 Plaintiff refused.

19 w) Defendant Cabornida then unlawfully told Plaintiff it was his responsibility to
20 find someone to replace him on the overtime shift, directly evidencing his retaliatory
21 animus based on Plaintiff's complaints of his unlawful conduct.

22 x) However, Jessenia Rowe did nothing to remediate the harassment and
23 discrimination that Plaintiff was facing based in substantial part on his disabilities,
24 thereby ratifying and condoning said unlawful conduct and comments by Defendant
25 Cabornida, directly evidencing her retaliatory animus based on Plaintiff's complaints of
26 unlawful conduct.

1 y) Defendant Cabornida’s harassing and discriminatory comments continued
2 thereafter, evidencing his retaliatory animus based upon based on Plaintiff’s complaints
3 of his unlawful conduct

4 z) Moreover, in or around January 2020, as a result of his disabilities, Plaintiff
5 pursued a Workers’ Compensation claim.

6 aa) However, despite Defendant LACMTA’s knowledge of Plaintiff’s disability, and
7 status as transgender, Defendant LACMTA sent him to a therapist whose office was
8 located in a conversion therapy clinic, thereby exacerbating Plaintiff’s disability, and
9 directly evidencing Defendant LACMTA’s retaliatory animus based on Plaintiff’s
10 complaints of unlawful conduct.

11 bb) Even worse, an entire wall of the waiting room where Plaintiff was left alone to
12 complete paperwork for over two hours prior to being seen was decorated with framed
13 book covers referencing the evils of homosexuality and promoting so-called “reparative
14 therapy.”

15 cc) In or around June 2019, Plaintiff returned from his leave and was placed on a shift
16 in which his direct supervisor was Defendant Lead Bergquist.

17 dd) Upon Plaintiff’s return, he experienced the same unlawful harassing and
18 discriminatory conduct on account of his sex/gender, transgender, gender identity or
19 expression, and/or sexual orientation.

20 ee) For instance, Defendant Bergquist referred to Cynthia Rivera as “Mini Rambo,”
21 in direct reference to her gender nonconforming appearance. Defendant Bergquist
22 purposefully made this comment in the presence of Plaintiff in order to harass and
23 discriminate, having known that Plaintiff is a transgender individual, directly evidencing
24 his retaliatory animus.

25 ff) In fact, Defendant Bergquist came to Plaintiff’s shared workspace on a severe
26 and/or pervasive basis, where Defendant Bergquist did not work, and made comments
27 regarding females, such as one directed towards Heavy Rail Inspector Esther Ang, “I was
28

1 worried she was going to come to Third Shift but I guess she doesn't want to work, so
2 she stayed on Second Shift.”

3 gg) Defendant Bergquist made this and other gender-charged comments in order to
4 harass, discriminate and intimidate Plaintiff. Defendant Bergquist going out of his way to
5 come to an area where he did not work in order to make gender-charged comments in the
6 presence of Plaintiff is yet more his retaliatory animus based on Plaintiff's complaints of
7 his unlawful conduct.

8 hh) On or about June 20, 2019, Plaintiff was called into a Project Briefing meeting
9 with Defendant Bergquist and Supervisor Moses Jones in which Defendant Bergquist
10 was told to discuss the details of his current project with Plaintiff, give him copies of
11 prints, take Plaintiff for an on-site walkthrough, among other things.

12 ii) The very next day, on or about June 21, 2019, Plaintiff noticed that Defendant
13 Bergquist had, as a biased personnel management decision, assigned himself and another
14 employee, Tuan Nguyen, to work on what Plaintiff was supposed to work on and
15 assigned Plaintiff elsewhere, once again directly evidencing his retaliatory animus based
16 on Plaintiff's complaints of his unlawful conduct.

17 jj) Moreover, on or about June 22, 2019, contrary to Plaintiff's request and without
18 supervision talking to him beforehand, Plaintiff was forced into another project briefing
19 meeting with Moses Jones, Joseph Cabornida, Brian Bergquist, Tuan Nguyen, and Mai
20 Cowart.

21 kk) Supervisor Jones reiterated that he wanted Defendant Bergquist to share the
22 previously requested information with Plaintiff, at which point Plaintiff informed
23 Defendant Bergquist he had requested to be excused from the project completely.
24 Supervisor Jones thereafter left rapidly, stating that it was a “Third shift issue,” so it was
25 not his responsibility.

26 ll) To wit, Plaintiff explained that he was not interested in trying to force Defendant
27 Bergquist to collaborate with him when he has a track record of clearly not being
28 interested in doing so.

1 mm) In response, Defendant Bergquist brought up Plaintiff having reported him for his
2 comments regarding Cynthia Rivera in 2016, explicitly admitting his retaliatory animus
3 against Plaintiff from 2016 to 2019 for having complained regarding his unlawful
4 comments and conduct, which violated both the FEHA and LACMTA policy.
5 Egregiously, this comment was made in the presence of Manager Cabornida, to which
6 there was no reaction and against which no remedial or disciplinary action was taken.

7 nn) Despite Defendant Bergquist's astonishing admission that he had been harassing,
8 discriminating, and retaliating against Plaintiff for three years, Defendant Cabornida
9 proceeded to tell Plaintiff that it was *his* attitude, *not* Defendant's Bergquist's behavior,
10 that was causing Plaintiff's "problems," and that discussing the problem and/or seeking
11 help was, in his opinion, unprofessional, thereby directly evidencing his retaliatory
12 animus based on Plaintiff's complaints of unlawful conduct.

13 oo) Further, Mr. Cabornida referred to the original complaint that Plaintiff filed in
14 2016 as "what [he] did to [Defendant Bergquist]," and stated that Plaintiff is making a
15 power grab to "get [his] way," directly evidencing his retaliatory animus based on
16 Plaintiff's complaints of unlawful conduct.

17 pp) Defendant Cabornida finished the meeting by stating to Plaintiff that Defendant
18 Bergquist was in charge, and that as long as he did not tell Plaintiff to do something
19 unsafe, that Plaintiff *had to* do whatever Defendant Bergquist told him to do.

20 qq) On or about August 7, 2019, Plaintiff was called into a meeting in order to resolve
21 the ongoing issues with Defendant Bergquist. Present at this meeting were Defendant
22 Cabornida, Manager Ambrozich, and Director Moran.

23 rr) Once again, Defendant Bergquist berated Plaintiff and told him *in front of three*
24 *different levels of management*, "If you don't like the way you are being treated,
25 unemployment is very low, and you should go find another job." All three levels of
26 supervisors sat by and watched and did nothing to remediate the unlawful harassment of
27 and discrimination against Plaintiff, thereby ratifying and condoning Defendant
28

1 Bergquist's conduct and directly evidencing their retaliatory animus based on Plaintiff's
2 complaints of unlawful conduct.

3 ss) On or about November 15, 2019, while working at the Westlake Station, Plaintiff
4 realized he had forgotten some equipment and asked Defendant Bergquist whether he had
5 the equipment, to which Defendant Bergquist stated he did not, forcing Plaintiff to go
6 retrieve the equipment.

7 tt) However, upon Plaintiff's return, Defendant Bergquist disclosed that *there was*
8 *actually no work that needed to be done by Plaintiff on the rail*, demonstrating he had
9 forced Plaintiff to go back and forth for no reason except to harass Plaintiff, thereby
10 directly evidencing his retaliatory animus based on Plaintiff's complaints of his unlawful
11 conduct.

12 uu) Towards the end of November 2019, Plaintiff managed to bid onto on a different
13 shift, which would mean he would be away from Defendant Bergquist for at least six
14 months. Subsequently, during the department's job briefing, Defendant Cabornida began
15 criticizing the employees, including Plaintiff, for being behind on relay testing.

16 vv) In response, Plaintiff explained that they were behind because they had not been
17 properly trained, at which point Defendant Bergquist shouted, "I am not going to listen to
18 this individual," a direct reference to Plaintiff's transgender status and directly evidencing
19 his retaliatory animus based on Plaintiff's complaints of his unlawful conduct.

20 ww) At that point, Plaintiff disclosed that he was changing shifts, to which Defendant
21 Bergquist responded sarcastically, "I heard about the good news," and attempting to
22 shake Plaintiff' hand in an effort to physically intimidate him, directly evidencing his
23 retaliatory animus based on Plaintiff's complaints of his unlawful conduct.

24 xx) After Plaintiff filed a Workers' Compensation claim as a result of the constant
25 harassment and discrimination, and despite LACMTA's knowledge of Plaintiff's status
26 as transgender, LACMTA sent him to a therapist whose office was located in a
27 conversion therapy clinic, directly evidencing its retaliatory animus based on Plaintiff's
28 complaints of unlawful conduct.

1 yy) Even worse, an entire wall of the waiting room where Plaintiff was left alone to
2 complete paperwork for over two hours prior to being seen was decorated with framed
3 book covers referencing the evils of homosexuality and promoting so-called “reparative
4 therapy.”

5 zz) When Plaintiff went into his evaluation, the doctor he spoke to, obviously having
6 knowledge that Plaintiff is transgender, inquired and/or commented about the following:

- 7 i. About Plaintiff’ plans (or lack thereof) for genital surgery;
- 8 ii. Expressed skepticism regarding the number of trans people today as
9 opposed to 30 years ago;
- 10 iii. Asked what Plaintiff name was previously;
- 11 iv. Asked which gender(s) Plaintiff was attracted to; and
- 12 v. Spoke about Dr. John Money as a respected researcher (Money claimed
13 that gender identity is primarily learned, not innate).

14 aaa) Further, the scheduling letter for Plaintiff stated that the appointment would last
15 between three and four hours, but he was kept for six hours.

16 bbb) After informing Defendant LACMTA regarding the incident at the conversion
17 therapy clinic along with pictures as evidence, Defendant LACMTA’s only response was
18 to advise their third-party administrator, Pro-Health, not to refer Defendant LACMTA
19 employees to that location anymore.

20 ccc) Defendant LACMTA once again failed to take proper measures and/or remediate
21 Plaintiff’s situation and the constant harassment, discrimination, and retaliation that he
22 faced, thereby directly evidencing its retaliatory animus based on Plaintiff’s complaints
23 of unlawful conduct.

24 ddd) Plaintiff continues to be treated differently, disparately, and negatively because of
25 his sex/gender, gender identity or expression, being transgender, and/or his sexual
26 orientation, including but not limited to Defendants harassing Plaintiff (as aforesaid),
27 denying Plaintiff opportunities, unfairly disciplining Plaintiff, and overly monitoring and
28 scrutinizing Plaintiff.

1 eee) At least through the July 1, 2020, and continuing, Defendant LACMTA and
2 DOES 1 through 100, and each of them, failed and/or refused to investigate Plaintiff's
3 complaints and take appropriate remedial actions.

4 126. Accordingly, Defendant LACMTA and DOES 1 through 100, and each of them, had and
5 maintained a policy and/or practice which prevented/prevents Plaintiff and other employees from
6 complaining about and/or protesting against his/her employer's violation(s) of law to a
7 government agency, or reasonable belief that a law(s) is being violated.

8 127. California Labor Code § 1102.5 declares:

9 (a) An employer, or any person acting on behalf of the employer, shall not make,
10 adopt, or enforce any rule, regulation, or policy preventing an employee from
11 disclosing information to a government or law enforcement agency, to a
12 person with authority over the employee, or to another employee who has
13 authority to investigate, discover, or correct the violation or noncompliance,
14 or from providing information to, or testifying before, any public body
 conducting an investigation, hearing, or inquiry, if the employee has
 reasonable cause to believe that the information discloses a violation of state
 or federal statute, or a violation of or noncompliance with a local, state, or
 federal rule or regulation, regardless of whether disclosing the information is
 part of the employee's job duties.

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

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

24 128. Defendant LACMTA and DOES 1 through 100, and each of them, violated Cal. Labor
25 Code § 1102.5(a) as it made, adopted, and enforced rules, regulation and policies preventing
26 Plaintiff from disclosing information to government and law enforcement agencies or a person
27 with authority over Plaintiff and/or authority to investigate, discover, investigate, or correct the
28 violation, where Plaintiff had reasonable cause to believe Plaintiff's employer was violating the

1 law.

2 129. Defendant LACMTA and DOES 1 through 100, and each of them, violated Cal. Labor
3 Code § 1102.5(b) as it retaliated against Plaintiff for protesting Defendants’ unlawful actions,
4 and/or because Defendant LACMTA and DOES 1 through 100, and each of them, felt Plaintiff
5 may protest, to a government or law enforcement agency or to a person with authority over the
6 employee and/or authority to investigate, discover, investigate, or correct the violation.

7 130. Plaintiff was retaliated against through the aforesaid acts by LACMTA and DOES 1
8 through 100, and each of them, at least in part, because of Plaintiff’s refusal to participate in an
9 activity that would result in a violation of state or federal statutes (or Plaintiff reasonably
10 believed to be in violation). Defendant LACMTA and DOES 1 through 100, and each of them,
11 were thus in violation of Cal. Labor Code § 1102.5(c).

12 131. When Plaintiff was subjected to the adverse employment actions identified above,
13 Defendant LACMTA and DOES 1 through 100, and each of them, were substantially motivated
14 by Plaintiff’s complaints of violations of state and/or federal law (or Plaintiff’s reasonable belief
15 that a law(s) was being violated), and said complaints were substantial motivating factors and/or
16 reasons in the decision to subject Plaintiff to the aforesaid retaliatory, adverse employment
17 actions, in violation of California Labor Code § 1102.5.

18 132. Prior to the initiation of this lawsuit, and pursuant to California Gov. Code §§ 900 et seq.,
19 Plaintiff filed a Claim for Damages form on or about March 2, 2020 in which Plaintiff alleged
20 Defendants’ unlawful conduct. Plaintiff has yet to receive a response from Defendant LACMTA,
21 thus allowing Plaintiff to bring this action. Attached hereto and incorporated herein as Exhibit
22 “C” is said notice.

23 133. At all times herein mentioned, the public policy of the State of California, as codified,
24 expressed and mandated by California Government Code §§ 12920 and 12940 et seq., was to
25 prohibit employers from harassing, discriminating, and retaliating against and/or wrongfully
26 terminating any individual on the grounds of their disabilities, sex/gender, gender identity or
27 expression, being transgender, and sexual orientation. This public policy of the State of
28 California is designed to protect all employees and to promote the welfare and well-being of the

1 community at large. The policy inures to the benefit of the public and is fundamental and
2 substantial.

3 134. At all times herein mentioned, the public policy of the State of California, as codified,
4 expressed and mandated by California Labor Code § 1102.5 prohibited discrimination and/or
5 retaliation against employees blowing the whistle about their employers' unlawful activities.
6 This public policy of the State of California is designed to protect all employees and to promote
7 the welfare and well-being of the community at large.

8 135. At all times herein mentioned, the public policy of the State of California was to prohibit
9 the intentional infliction of emotional distress to another or opposing said unlawful practices.
10 This public policy of the State of California is designed to protect all employees and to promote
11 the welfare and well-being of the community at large.

12 136. As a direct and legal result of the acts and omissions of Defendant LACMTA and DOES
13 1 through 100, and each of them, Plaintiff was rendered sick, sore, lame, disabled and/or
14 disordered, both internally and/or externally, and suffered, among other things, emotional
15 distress, including but not limited to shock, pain, discomfort and/or anxiety.

16 137. As a further legal result of the acts and omissions of Defendant LACMTA and DOES 1
17 through 100, and each of them, Plaintiff has been forced to incur expenses for medical care, X-
18 rays, and/or laboratory costs during the period of Plaintiff's disability, and is informed and
19 believes, and/or thereon alleges, that Plaintiff will in the future be forced to incur additional
20 expenses of the same nature, all in an amount which is at present unknown. Plaintiff will pray
21 leave of court to show the exact amount of said expenses at the time of trial.

22 138. Prior to the occurrence of the incidents, Plaintiff was an able-bodied individual, but since
23 said incidents has been unable to engage fully in Plaintiff's occupation, and/or is informed and
24 believes, and thereon alleges, that Plaintiff will be partially and/or fully incapacitated and/or
25 unable to perform Plaintiff's usual work for an indefinite period of time in the future, all to
26 Plaintiff's damages in an amount which is at present unascertained. Plaintiff will pray leave of
27 court to show the total amount of loss of earnings at the time of trial.

28 139. As a further direct and legal result of the acts of Defendant LACMTA and DOES 1

1 through 100, and each of them, Plaintiff has been caused, and did suffer, and continues to suffer
2 severe and/or permanent emotional and/or mental distress and anguish, humiliation,
3 embarrassment, fright, shock, pain, discomfort and/or anxiety. The exact nature and extent of
4 said injuries is presently unknown to Plaintiff, who will pray leave of court to assert the same
5 when they are ascertained.

6 140. Plaintiff is entitled to a civil penalty up to ten thousand dollars (\$10,000) for each
7 violation of Cal. Lab. Code § 1102.5.

8 141. By the acts and conduct of aforesaid Defendant LACMTA and DOES 1 through 100, and
9 each of them, Plaintiff has been directly and legally caused to suffer actual damages pursuant to
10 California Civil Code § 3333 including, but not limited to, loss of earnings and future earning
11 capacity, medical and related expenses for care and procedures both now and in the future,
12 attorneys' fees, and other pecuniary loss not presently ascertained, for which Plaintiff will seek
13 leave of court to amend when ascertained.

14 142. As a result of the unlawful acts of Defendant LACMTA and DOES 1 through 100 and
15 each of them, as alleged herein, Plaintiff is entitled to reasonable attorneys' fees and costs of said
16 suit as specifically provided in Cal. C.C.P. § 1021.5. Plaintiff's action enforces important rights
17 affecting the public interest by bringing forth this lawsuit to ensure Defendant LACMTA and
18 DOES 1 through 100, and each of them, refrain from unlawfully retaliating against employees
19 for blowing the whistle, thereby conferring a significant benefit on the general public's health
20 and well-being as a result. The necessity and financial burden of this private enforcement, as
21 well as the interest of justice, entitles Plaintiff to reasonable attorneys' fees and costs under Cal.
22 C.C.P. § 1021.5.

23 143. Plaintiff has been damaged in an amount within the jurisdictional limits of this Court.

24 ///

25 ///

26 ///

27 ///

28 ///

1 **XIII.**

2 **EIGHTH CAUSE OF ACTION**

3 **For Intentional Infliction of Emotional Distress**

4 **Against All Defendants & DOES 1 Through 100, Inclusive**

5 144. Plaintiff incorporates herein by reference and re-alleges each and every paragraph in this
6 Complaint as though duly set forth in full herein.

7 145. The aforesaid conduct of Defendants and DOES 1 through 100, and each of them, was so
8 extreme and outrageous as to exceed all bounds of that usually tolerated in a civilized society,
9 and intended to cause and actually did cause Plaintiff to suffer severe emotional distress.

10 146. Defendants, and each of them, intended to cause and did cause Plaintiff severe emotional
11 distress, as a result of the aforesaid unlawful conduct.

12 147. Plaintiff did not consent to Defendants' conduct, as herein alleged, and said conduct was
13 unprivileged. Defendants' conduct caused Plaintiff to suffer severe emotional distress.

14 148. Defendants' conduct continues to cause Plaintiff to suffer severe emotional distress.

15 149. Further, at all times relevant herein, individual Defendants were agents/employees of
16 Defendant LACMTA and DOES 1 through 100, and each of them, and in doing the acts alleged
17 herein, were acting within the course and scope of their employment with Defendant LACMTA
18 and DOES 1 through 100, and each of them.

19 a) In or around January 2016, shortly after Plaintiff informed Defendant LACMTA
20 of his transgender status, Defendant LACMTA held a meeting with its employees in
21 which it purposely intimidated its employees from asking questions regarding Plaintiff's
22 gender identity, creating a situation in which everyone knew Plaintiff was transgender but
23 treated him differently because they were afraid to say the wrong thing.

24 b) In or around June 2016, in an effort to intimidate Plaintiff due in substantial part
25 to his sex/gender, Defendant Bergquist commented about another employee, Cynthia
26 Rivera, an employee of which it is common knowledge within the department that is not
27 heterosexual, "If I had a chance, I would be happy to push [co-worker] Cynthia Rivera in
28 front of a high rail vehicle."

1 c) Critically, Ms. Rivera had a gender nonconforming appearance, thereby directly
2 evidencing Defendant Bergquist's discriminatory and retaliatory animus towards
3 homosexual and/or transgender, or gender nonconforming individuals. Additionally, Ms.
4 Rivera had been open about having a variety of gender nonconforming interests.

5 d) Department Manager Moran took no remedial or disciplinary action towards
6 Defendant Bergquist's harassing and discriminatory comments and therefore, Defendant
7 LACMTA, through its Department Manager, ratified and condoned Mr. Bergquist's
8 unlawful discriminatory and retaliatory conduct.

9 e) In or around August or September 2016, Plaintiff and his co-worker, Lawrence
10 Lee were assigned to be trained by Defendant Bergquist at Union Station.

11 i. Defendant Bergquist took care to slowly walk Mr. Lee through the
12 training, making sure to thoroughly explain everything to him and ensure Mr. Lee
13 had an understanding of what was supposed to be done.

14 ii. When it came to Plaintiff's part of the training, Defendant Bergquist simply
15 left Plaintiff's presence with Mr. Lee to discuss blueprints, knowing that Plaintiff
16 had no knowledge of how to perform the tasks he was supposed to, since
17 Defendant Bergquist was supposed to be training him on said tasks.

18 iii. Rather, when Plaintiff approached Defendant Bergquist for assistance, Mr.
19 Bergquist began yelling at and insulting Plaintiff in front of his co-worker, in an
20 effort to belittle Plaintiff, based in substantial part on his sex/gender, gender
21 identity or expression, his being transgender, and/or sexual orientation.

22 f) Indeed, Defendant Bergquist went out of his way to continually harass Plaintiff on
23 a severe and/or pervasive basis, directly evidencing his retaliatory animus.

24 g) Moreover, Lawrence Lee stated to Plaintiff, "You are going to be stuck with
25 [Defendant Bergquist] forever," laughing.

26 h) Rather than stop the harassment and discrimination of Plaintiff upon being
27 informed of it, Defendant Cabornida stated to Plaintiff, "My only responsibility is to
28

1 manage work, not interpersonal relationships, and [Defendant Bergquist] is not violating
2 any policies,” thereby directly evidencing his retaliatory animus.

3 i) However, this was untrue, as Defendant LACMTA has a claimed anti-harassment
4 and anti-bullying policy, which was clearly being violated, as evidenced by Defendant
5 Cabornida’s aforesaid admission.

6 j) As such, Defendant LACMTA was put on notice of FEHA and other policy
7 violations, and ratified and condoned the unlawful harassment, discrimination, and
8 retaliation that Plaintiff was facing due in substantial part to his sex/gender, transgender,
9 gender identity or expression, sexual orientation, and related complaints thereto.

10 k) In or around late 2016, Defendant Bergquist began refusing to tell Plaintiff and
11 Cynthia Rivera what their assignments were but would tell all the other employees under
12 him what their assignments were, directly evidencing his discriminatory and retaliatory
13 animus. This forced Plaintiff to have to ask around to simply find out what he was
14 supposed to do.

15 l) In addition, Lawrence Lee would not show up for job assignments but would
16 never face disciplinary action, while Plaintiff regularly faced scrutiny and being overly
17 monitored as a biased personnel management decision on a severe and/or pervasive basis,
18 directly evidencing Defendant Bergquist’s discriminatory and retaliatory animus.

19 m) In or around February 2017, Plaintiff was working on an independent capital
20 improvement project under the direction of Manager Gary Ambrozich.

21 n) Defendant Bergquist went out of his way to go to the location where Plaintiff was
22 working, and as a biased personnel management decision, scrutinize and monitor his
23 work, and subsequently tell Manager Ambrozich that Plaintiff did something wrong in
24 order to further harass Plaintiff, even though Defendant Bergquist was not Plaintiff’s
25 direct supervisor at that time.

26 o) Defendant Bergquist’s biased personnel management decision to not address the
27 issue he found and to circumvent Plaintiff to go directly to Manager Ambrozich is direct
28 evidence of Defendant Bergquist’s discriminatory and retaliatory animus.

1 p) In or around July 2018, Plaintiff took a medical leave of absence due to major
2 depression, which he had been previously been diagnosed with, and which Defendant
3 LACMTA was on notice, per an email from Plaintiff to Manager Ambrozich.

4 q) Upon Plaintiff's return to work in or around June 2019 Defendant Cabornida was
5 put on notice of Plaintiff's disabilities.

6 r) Specifically, beginning on or about June 22, 2019 Defendant Cabornida began
7 asking whether Plaintiff can work overtime, to which Plaintiff stated to him he was
8 unable to due to his disabilities, using the specific phrase that he did not want to get
9 "burnout."

10 s) Thereafter, on a severe and/or pervasive basis, Defendant Cabornida began
11 making harassing comments towards Plaintiff and to Plaintiff's co-workers due in
12 substantial part to his disabilities.

13 t) For instance, on or about June 22, 2019 Defendant Cabornida made a comment to
14 Tuan Nguyen in front of Plaintiff, "You're hardcore, and you don't get *burnout* from
15 working overtime," using the same phrase Plaintiff had initially used in regards to his
16 disabilities to harass Plaintiff, directly evidencing his retaliatory animus.

17 u) Thereafter, Plaintiff was told by his co-worker Mai Cowart that she had worked
18 overtime during the past week because Defendant Cabornida told her that Tuan Nguyen
19 was "*burnout*," again using the same phrase Plaintiff had used in order to harass
20 Plaintiff. However, Nguyen was present when Cowart showed up to work the overtime
21 shift, which directly evidences Defendant Cabornida's retaliatory animus.

22 v) On or about July 11, 2019, Defendant Cabornida once again pressured Plaintiff to
23 work overtime, which Plaintiff once again stated he could not due to his disabilities, at
24 which point Defendant Cabornida demanded Plaintiff come in to work overtime, which
25 Plaintiff refused.

26 w) Defendant Cabornida then unlawfully told Plaintiff it was his responsibility to
27 find someone to replace him on the overtime shift, directly evidencing his retaliatory
28 animus.

1 x) However, Jessenia Rowe did nothing to remediate the harassment and
2 discrimination that Plaintiff was facing based in substantial part on his disabilities,
3 thereby ratifying and condoning said unlawful conduct and comments by Defendant
4 Cabornida, directly evidencing her retaliatory animus.

5 y) Defendant Cabornida's harassing and discriminatory comments continued
6 thereafter, evidencing his retaliatory animus based upon Plaintiff's complaints.

7 z) Moreover, in or around January 2020, as a result of his disabilities, Plaintiff
8 pursued a Workers' Compensation claim.

9 aa) However, despite Defendant LACMTA's knowledge of Plaintiff's disability, and
10 status as transgender, Defendant LACMTA sent him to a therapist whose office was
11 located in a conversion therapy clinic, thereby exacerbating Plaintiff's disability, and
12 directly evidencing Defendant LACMTA's retaliatory animus.

13 bb) Even worse, an entire wall of the waiting room where Plaintiff was left alone to
14 complete paperwork for over two hours prior to being seen was decorated with framed
15 book covers referencing the evils of homosexuality and promoting so-called "reparative
16 therapy."

17 cc) In or around June 2019, Plaintiff returned from his leave and was placed on a shift
18 in which his direct supervisor was Defendant Lead Bergquist.

19 dd) Upon Plaintiff's return, he experienced the same unlawful harassing and
20 discriminatory conduct on account of his sex/gender, transgender, gender identity or
21 expression, and/or sexual orientation.

22 ee) For instance, Defendant Bergquist referred to Cynthia Rivera as "Mini Rambo,"
23 in direct reference to her gender nonconforming appearance. Defendant Bergquist
24 purposefully made this comment in the presence of Plaintiff in order to harass and
25 discriminate, having known that Plaintiff is a transgender individual, directly evidencing
26 his discriminatory and retaliatory animus.

27 ff) In fact, Defendant Bergquist came to Plaintiff's shared workspace on a severe
28 and/or pervasive basis, where Defendant Bergquist did not work, and made comments

1 regarding females, such as one directed towards Heavy Rail Inspector Esther Ang, “I was
2 worried she was going to come to Third Shift but I guess she doesn’t want to work, so
3 she stayed on Second Shift.”

4 gg) Defendant Bergquist made this and other gender-charged comments in order to
5 harass, discriminate and intimidate Plaintiff. Defendant Bergquist going out of his way to
6 come to an area where he did not work in order to make gender-charged comments in the
7 presence of Plaintiff is yet more direct evidence of his discriminatory and retaliatory
8 animus.

9 hh) On or about June 20, 2019, Plaintiff was called into a Project Briefing meeting
10 with Defendant Bergquist and Supervisor Moses Jones in which Defendant Bergquist
11 was told to discuss the details of his current project with Plaintiff, give him copies of
12 prints, take Plaintiff for an on-site walkthrough, among other things.

13 ii) The very next day, on or about June 21, 2019, Plaintiff noticed that Defendant
14 Bergquist had, as a biased personnel management decision, assigned himself and another
15 employee, Tuan Nguyen, to work on what Plaintiff was supposed to work on and
16 assigned Plaintiff elsewhere, once again directly evidencing his discriminatory and
17 retaliatory animus.

18 jj) Moreover, on or about June 22, 2019, contrary to Plaintiff’s request and without
19 supervision talking to him beforehand, Plaintiff was forced into another project briefing
20 meeting with Moses Jones, Joseph Cabornida, Brian Bergquist, Tuan Nguyen, and Mai
21 Cowart.

22 kk) Supervisor Jones reiterated that he wanted Defendant Bergquist to share the
23 previously requested information with Plaintiff, at which point Plaintiff informed
24 Defendant Bergquist he had requested to be excused from the project completely.
25 Supervisor Jones thereafter left rapidly, stating that it was a “Third shift issue,” so it was
26 not his responsibility.

1 ll) To wit, Plaintiff explained that he was not interested in trying to force Defendant
2 Bergquist to collaborate with him when he has a track record of clearly not being
3 interested in doing so.

4 mm) In response, Defendant Bergquist brought up Plaintiff having reported him for his
5 comments regarding Cynthia Rivera in 2016, explicitly admitting his discriminatory and
6 retaliatory animus against Plaintiff from 2016 to 2019 for having complained regarding
7 his unlawful comments, which violated both the FEHA and LACMTA policy.
8 Egregiously, this comment was made in the presence of Manager Cabornida, to which
9 there was no reaction and against which no remedial or disciplinary action was taken.

10 nn) Despite Defendant Bergquist's astonishing admission that he had been harassing,
11 discriminating, and retaliating against Plaintiff for three years, Defendant Cabornida
12 proceeded to tell Plaintiff that it was *his* attitude, *not* Defendant's Bergquist's behavior,
13 that was causing Plaintiff's "problems," and that discussing the problem and/or seeking
14 help was, in his opinion, unprofessional, thereby directly evidencing his discriminatory
15 and retaliatory animus.

16 oo) Further, Mr. Cabornida referred to the original complaint that Plaintiff filed in
17 2016 as "what [he] did to [Defendant Bergquist]," and stated that Plaintiff is making a
18 power grab to "get [his] way," directly evidencing his discriminatory and retaliatory
19 animus.

20 pp) Defendant Cabornida finished the meeting by stating to Plaintiff that Defendant
21 Bergquist was in charge, and that as long as he did not tell Plaintiff to do something
22 unsafe, that Plaintiff *had to* do whatever Defendant Bergquist told him to do.

23 qq) On or about August 7, 2019, Plaintiff was called into a meeting in order to resolve
24 the ongoing issues with Defendant Bergquist. Present at this meeting were Defendant
25 Cabornida, Manager Ambrozich, and Director Moran.

26 rr) Once again, Defendant Bergquist berated Plaintiff and told him *in front of three*
27 *different levels of management*, "If you don't like the way you are being treated,
28 unemployment is very low, and you should go find another job." All three levels of

1 supervisors sat by and watched and did nothing to remediate the unlawful harassment of
2 and discrimination against Plaintiff, thereby ratifying and condoning Defendant
3 Bergquist's conduct and directly evidencing their discriminatory and retaliatory animus.

4 ss) On or about November 15, 2019, while working at the Westlake Station, Plaintiff
5 realized he had forgotten some equipment and asked Defendant Bergquist whether he had
6 the equipment, to which Defendant Bergquist stated he did not, forcing Plaintiff to go
7 retrieve the equipment.

8 tt) However, upon Plaintiff's return, Defendant Bergquist disclosed that *there was*
9 *actually no work that needed to be done by Plaintiff on the rail*, demonstrating he had
10 forced Plaintiff to go back and forth for no reason except to harass Plaintiff, thereby
11 directly evidencing his discriminatory and retaliatory animus.

12 uu) Towards the end of November 2019, Plaintiff managed to bid onto on a different
13 shift, which would mean he would be away from Defendant Bergquist for at least six
14 months. Subsequently, during the department's job briefing, Defendant Cabornida began
15 criticizing the employees, including Plaintiff, for being behind on relay testing.

16 vv) In response, Plaintiff explained that they were behind because they had not been
17 properly trained, at which point Defendant Bergquist shouted, "I am not going to listen to
18 this individual," a direct reference to Plaintiff's transgender status and directly evidencing
19 his discriminatory and retaliatory animus.

20 ww) At that point, Plaintiff disclosed that he was changing shifts, to which Defendant
21 Bergquist responded sarcastically, "I heard about the good news," and attempting to
22 shake Plaintiff' hand in an effort to physically intimidate him, directly evidencing his
23 discriminatory and retaliatory animus.

24 xx) After Plaintiff filed a Workers' Compensation claim as a result of the constant
25 harassment and discrimination, and despite LACMTA's knowledge of Plaintiff's status
26 as transgender, LACMTA sent him to a therapist whose office was located in a
27 conversion therapy clinic, directly evidencing its discriminatory and retaliatory animus.
28

1 yy) Even worse, an entire wall of the waiting room where Plaintiff was left alone to
2 complete paperwork for over two hours prior to being seen was decorated with framed
3 book covers referencing the evils of homosexuality and promoting so-called “reparative
4 therapy.”

5 zz) When Plaintiff went into his evaluation, the doctor he spoke to, obviously having
6 knowledge that Plaintiff is transgender, inquired and/or commented about the following:

- 7 i. About Plaintiff’ plans (or lack thereof) for genital surgery;
- 8 ii. Expressed skepticism regarding the number of trans people today as
9 opposed to 30 years ago;
- 10 iii. Asked what Plaintiff name was previously;
- 11 iv. Asked which gender(s) Plaintiff was attracted to; and
- 12 v. Spoke about Dr. John Money as a respected researcher (Money claimed
13 that gender identity is primarily learned, not innate).

14 aaa) Further, the scheduling letter for Plaintiff stated that the appointment would last
15 between three and four hours, but he was kept for six hours.

16 bbb) After informing Defendant LACMTA regarding the incident at the conversion
17 therapy clinic along with pictures as evidence, Defendant LACMTA’s only response was
18 to advise their third-party administrator, Pro-Health, not to refer Defendant LACMTA
19 employees to that location anymore.

20 ccc) Defendant LACMTA once again failed to take proper measures and/or remediate
21 Plaintiff’s situation and the constant harassment, discrimination, and retaliation that he
22 faced, thereby directly evidencing its retaliatory animus.

23 ddd) Plaintiff continues to be treated differently, disparately, and negatively because of
24 his sex/gender, gender identity or expression, being transgender, and/or his sexual
25 orientation, including but not limited to Defendants harassing Plaintiff (as aforesaid),
26 denying Plaintiff opportunities, unfairly disciplining Plaintiff, and overly monitoring and
27 scrutinizing Plaintiff.

1 eee) At least through the July 1, 2020, and continuing, Defendant LACMTA and
2 DOES 1 through 100, and each of them, failed and/or refused to investigate Plaintiff's
3 complaints and take appropriate remedial actions.

4 150. As a direct and legal result of the acts and omissions of Defendants and DOES 1 through
5 100, and each of them, Plaintiff was rendered sick, sore, lame, disabled and/or disordered, both
6 internally and/or externally, and suffered, among other things, emotional distress, including but
7 not limited to shock, pain, discomfort and/or anxiety.

8 151. Prior to the initiation of this lawsuit, and pursuant to California Gov. Code §§ 900 et seq.,
9 Plaintiff filed a Claim for Damages form on or about March 2, 2020 in which Plaintiff alleged
10 Defendants' unlawful conduct. Plaintiff has yet to receive a response from Defendant LACMTA,
11 thus allowing Plaintiff to bring this action. Attached hereto and incorporated herein as Exhibit
12 "C" is said notice.

13 152. As a further legal result of the acts and omissions of Defendants and DOES 1 through
14 100, and each of them, Plaintiff has been forced to incur expenses for medical care, X-rays,
15 and/or laboratory costs during the period of Plaintiff's disabilities, and is informed and believes,
16 and/or thereon alleges, that Plaintiff will in the future be forced to incur additional expenses of
17 the same nature, all in an amount which is at present unknown. Plaintiff will pray leave of court
18 to show the exact amount of said expenses at the time of trial.

19 153. Prior to the occurrence of the incidents, Plaintiff was an able-bodied individual, but since
20 said incidents has been unable to engage fully in Plaintiff's occupation, and/or is informed and
21 believes, and thereon alleges, that Plaintiff will be partially and/or fully incapacitated and/or
22 unable to perform Plaintiff's usual work for an indefinite period of time in the future, all to
23 Plaintiff's damages in an amount which is at present unascertained. Plaintiff will pray leave of
24 court to show the total amount of loss of earnings at the time of trial.

25 154. As a further direct and legal result of the acts of Defendants and DOES 1 through 100,
26 Plaintiff has been caused, and did suffer, and continues to suffer severe and/or permanent
27 emotional and/or mental distress and anguish, humiliation, embarrassment, fright, shock, pain,
28 discomfort and/or anxiety. The exact nature and extent of said injuries is presently unknown to
Plaintiff, who will pray leave of court to assert the same when they are ascertained.

1 155. The aforementioned acts of Defendants Bergquist and Cabornida, and DOES 1 through
2 100, and each of them, were willful, wanton, malicious, intentional, oppressive and despicable
3 and were done in willful and conscious disregard of the rights, welfare and safety of Plaintiff,
4 thereby justifying the awarding of punitive and exemplary damages against Defendants
5 Bergquist and Cabornida, and DOES 1 through 100, in an amount to be determined at the time of
6 trial pursuant to Cal. Civil Code § 3294(a) and (b).

7 156. By the aforesaid acts and conduct of Defendants and DOES 1 through 100, and each of
8 them, Plaintiff has been directly and legally caused to suffer actual damages pursuant to
9 California Civil Code § 3333 including, but not limited to, loss of earnings and future earning
10 capacity, medical and related expenses for care and procedures both now and in the future,
11 attorneys' fees, and other pecuniary loss not presently ascertained, for which Plaintiff will seek
12 leave of court to amend when ascertained.

13 157. As a result of the unlawful acts of Defendants and DOES 1 through 100, and each of
14 them, as alleged herein, Plaintiff is entitled to reasonable attorneys' fees and costs of said suit as
15 specifically provided in Cal. C.C.P. § 1021.5. Plaintiff's action enforces important rights
16 affecting the public interest by bringing forth this lawsuit to ensure Defendants refrain from
17 intentionally inflicting emotional distress on others (employees/coworkers), thereby conferring a
18 significant benefit on the general public's health and well-being as a result. The necessity and
19 financial burden of this private enforcement, as well as the interest of justice, entitles Plaintiff to
20 reasonable attorneys' fees and costs under Cal. C.C.P. § 1021.5.

21 158. Plaintiff has been damaged in an amount within the jurisdictional limits of this Court.

22 159. Plaintiff has been damaged in an amount within the jurisdictional limits of this Court.

23 WHEREFORE, PLAINTIFF JESS REYNOLDS prays for judgment against the Defendants, and
24 each of them, as follows:

- 25 1. For general damages in an amount within the jurisdictional limits of this Court;
- 26 2. For special damages in an amount within the jurisdictional limits of this Court;
- 27 3. For medical expenses and related items of expense, according to proof;
- 28 4. For loss of earnings, according to proof;
5. For consequential and incidental damages according to proof;

- 1 6. For prejudgment interest according to proof;
- 2 7. For declaratory relief;
- 3 8. For injunctive relief;
- 4 9. For damages, penalties and attorneys' fees and costs of suit as provided for by Cal. Gov.
- 5 Code § 12965(b);
- 6 10. For civil penalties for each violation of Cal. Lab. Code § 1102.5.
- 7 11. For punitive and exemplary damages as provided for by Cal. Civil Code § 3294, against
- 8 Defendants Bergquist and Cabornida, and DOES 1 through 100, and each of them, only;
- 9 12. For damages, penalties and costs of suit as provided for by California Civil Code § 3333;
- 10 13. For damages, penalties and reasonable attorneys' fees and costs of suit against Defendant
- 11 LACMTA and DOES 1 through 100, and each of them, as provided for by California Code of
- 12 Civil Procedure § 1021.5, according to proof;
- 13 14. For such other and further relief as the Court may deem just and proper.
- 14
- 15

16 Dated: July 1, 2020

REISNER & KING LLP



17 By: _____

18 NIRAN GRIMBERG

19 Attorneys for PLAINTIFF

20 JESS REYNOLDS

21

22

23

24

25

26

27

28

EXHIBIT “A”



DEPARTMENT OF FAIR EMPLOYMENT & HOUSING

KEVIN KISH, DIRECTOR

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

July 1, 2020

Adam Reisner
15303 VENTURA BLVD STE 1260
Sherman Oaks, California 91403

RE: **Notice to Complainant's Attorney**
DFEH Matter Number: 202003-09464203
Right to Sue: Reynolds / Los Angeles County Metropolitan Transportation
Authority

Dear Adam Reisner:

Attached is a copy of your **amended** complaint of discrimination filed with the Department of Fair Employment and Housing (DFEH) pursuant to the California Fair Employment and Housing Act, Government Code section 12900 et seq.

Pursuant to Government Code section 12962, DFEH will not serve these documents on the employer. You or your client must serve the complaint.

The amended complaint is deemed to have the same filing date of the original complaint. This is not a new Right to Sue letter. The original Notice of Case Closure and Right to Sue issued in this case remains the only such notice provided by the DFEH. (Cal. Code Regs., tit. 2, § 10022.)

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

Sincerely,

Department of Fair Employment and Housing

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

5 **In the Matter of the Complaint of**

6 Jess Reynolds

DFEH No. 202003-09464203

7 Complainant,

8 vs.

9 Los Angeles County Metropolitan Transportation
10 Authority
11 One Gateway Plaza
12 Los Angeles, California 90012

13 Brian Bergquist

14 ,

15 Joseph Cabornida

16 ,

17 Respondents

18 1. Respondent **Los Angeles County Metropolitan Transportation Authority** is an
19 **employer** subject to suit under the California Fair Employment and Housing Act
20 (FEHA) (Gov. Code, § 12900 et seq.).

21 2. Complainant **Jess Reynolds**, resides in the City of **Sherman Oaks** State of
22 **California**.

23 3. Complainant alleges that on or about **March 2, 2020**, respondent took the
24 following adverse actions:

25 **Complainant was harassed** because of complainant's sex/gender, gender identity
26 or expression, sexual orientation, family care or medical leave (cfra) (employers of
27 50 or more people), disability (physical or mental), medical condition (cancer or
28 genetic characteristic), sexual harassment- hostile environment, association with a
member of a protected class.

1 **Complainant was discriminated against** because of complainant's sex/gender,
2 gender identity or expression, sexual orientation, family care or medical leave (cfra)
3 (employers of 50 or more people), disability (physical or mental), medical condition
4 (cancer or genetic characteristic), sexual harassment- hostile environment,
5 association with a member of a protected class and as a result of the discrimination
6 was denied hire or promotion, reprimanded, denied equal pay, suspended, demoted,
7 asked impermissible non-job-related questions, denied any employment benefit or
8 privilege, denied reasonable accommodation for a disability, denied family care or
9 medical leave (cfra) (employers of 50 or more people), denied work opportunities or
10 assignments, denied or forced to transfer.

11 **Complainant experienced retaliation** because complainant reported or resisted
12 any form of discrimination or harassment, requested or used a disability-related
13 accommodation, participated as a witness in a discrimination or harassment
14 complaint, requested or used leave under the california family rights act or fmla
15 (employers of 50 or more people) and as a result was denied hire or promotion,
16 reprimanded, denied equal pay, suspended, demoted, asked impermissible non-job-
17 related questions, denied any employment benefit or privilege, denied reasonable
18 accommodation for a disability, denied family care or medical leave (cfra)
19 (employers of 50 or more people), denied or forced to transfer.

20 **Additional Complaint Details:** I was harassed, discriminated and retaliated against
21 due to my and in association with others, gender, sexual orientation, gender identity,
22 disability, and for protesting and complaining. I was denied transfer and
23 opportunities, forced to work in a hostile work environment, called demeaning
24 names, ignored, leered and stared at, yelled at, abused. I was referred to as the
25 "individual" and congratulated for getting away from the abuser. I was a witness to
26 threats of violence and sexual orientation harassment. I protested and was
27 punished, including most recently, I was told by my shift lead that I was being
28 punished in terms of training and communication because I had protested his
actions. I complained and escalated to human resources, but nothing has been
done to stop and correct the conduct. My lead continues to be abusive, and deny be
training and opportunities. My employer failed to investigate and take appropriate
remedial action. I was sent by my employer to a sexual orientation conversion doctor
who asked inappropriate questions and demeaned and harassed me with questions.

1 VERIFICATION

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

5 On July 1, 2020, I declare under penalty of perjury under the laws of the State of
6 California that the foregoing is true and correct.

7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
Sherman Oaks, California



DEPARTMENT OF FAIR EMPLOYMENT & HOUSING

KEVIN KISH, DIRECTOR

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

March 2, 2020

Adam Reisner
15303 VENTURA BLVD STE 1260
Sherman Oaks, California 91403

RE: **Notice to Complainant's Attorney**
DFEH Matter Number: 202003-09464203
Right to Sue: Reynolds / Los Angeles County Metropolitan Transportation
Authority et al.

Dear Adam Reisner:

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

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

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

Sincerely,

Department of Fair Employment and Housing

1 association with a member of a protected class and as a result of the discrimination
2 was denied hire or promotion, reprimanded, denied equal pay, suspended, demoted,
3 asked impermissible non-job-related questions, denied any employment benefit or
4 privilege, denied reasonable accommodation for a disability, denied family care or
5 medical leave (cfra) (employers of 50 or more people), denied work opportunities or
6 assignments, denied or forced to transfer.

5 **Complainant experienced retaliation** because complainant reported or resisted
6 any form of discrimination or harassment, requested or used a disability-related
7 accommodation, participated as a witness in a discrimination or harassment
8 complaint, requested or used leave under the california family rights act or fmla
9 (employers of 50 or more people) and as a result was denied hire or promotion,
10 reprimanded, denied equal pay, suspended, demoted, asked impermissible non-job-
11 related questions, denied any employment benefit or privilege, denied reasonable
12 accommodation for a disability, denied family care or medical leave (cfra)
13 (employers of 50 or more people), denied or forced to transfer.

11 **Additional Complaint Details:** I was harassed, discriminated and retaliated against
12 due to my and in association with others, gender, sexual orientation, gender identity,
13 disability, and for protesting and complaining. I was denied transfer and
14 opportunities, forced to work in a hostile work environment, called demeaning
15 names, ignored, leered and stared at, yelled at, abused. I was referred to as the
16 "individual" and congratulated for getting away from the abuser. I was a witness to
17 threats of violence and sexual orientation harassment. I protested and was
18 punished, including most recently, I was told by my shift lead that I was being
19 punished in terms of training and communication because I had protested his
20 actions. I complained and escalated to human resources, but nothing has been
21 done to stop and correct the conduct. My lead continues to be abusive, and deny be
22 training and opportunities. My employer failed to investigate and take appropriate
23 remedial action. I was sent by my employer to a sexual orientation conversion doctor
24 who asked inappropriate questions and demeaned and harassed me with questions.
25
26
27
28

1 VERIFICATION

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

5 On March 2, 2020, I declare under penalty of perjury under the laws of the State of
6 California that the foregoing is true and correct.

7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
Sherman Oaks, California

EXHIBIT “B”



DEPARTMENT OF FAIR EMPLOYMENT & HOUSING

KEVIN KISH, DIRECTOR

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

March 2, 2020

Jess Reynolds
c/o Reisner & King LLP 15303 Ventura Blvd., Suite 1260
Sherman Oaks, California 91403

RE: Notice of Case Closure and Right to Sue
DFEH Matter Number: 202003-09464203
Right to Sue: Reynolds / Los Angeles County Metropolitan Transportation
Authority et al.

Dear Jess Reynolds,

This letter informs you that the above-referenced complaint was filed with the Department of Fair Employment and Housing (DFEH) has been closed effective March 2, 2020 because an immediate Right to Sue notice was requested. DFEH will take no further action on the complaint.

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

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

Sincerely,

Department of Fair Employment and Housing

EXHIBIT “C”

Claim for Damages

Los Angeles County Metropolitan Transportation Authority
One Gateway Plaza, Mail Stop 99-PL-4, Los Angeles, CA 90012-2952

Please type or print.

FOR OFFICE USE ONLY
Claim number & Receipt date

CLAIMANT INFORMATION:

Reynolds	Jess	Eitan
Last Name	First Name	Middle Name/Initial
Signal Inspector	XXX-XX-0452	12/17/1981
Occupation	Social Security Number	Birth Date
840 South Hobart Blvd., Apt 608		
Street Address		
Los Angeles, California 90005		626-644-8600
City State Zip		Telephone Number

IF CLAIMANT IS A MINOR, PARENT OR GUARDIAN INFORMATION:

Last Name	First Name	Middle Name/Initial
Street Address		
City State Zip		Telephone Number

IF YOU HAVE AN ATTORNEY PLEASE COMPLETE THIS SECTION:

Last Name	First Name	Middle Name/Initial	Telephone Number
Street Address			
		City State Zip	

INCIDENT INFORMATION:

Please indicate if you were a Metro bus or Metro Rail passenger: Yes No

- 1. bus rail platform parking lot bus stop terminal other Current Employee
- 2. Other than bus or rail car, vehicle description _____
- 3. Accident Date From 9/2/2019 - 3/2/2020 Location _____
- 4. Direction _____ On Which Street _____ Cross-Street _____
- 5. Speed _____ Weather _____ Bus or Rail Car # _____ Line # _____
- 6. Boarding Point _____ Operator Name or Badge # _____

OWNER OF PRIVATE VEHICLE PLEASE COMPLETE THIS SECTION:

7. Name _____	Driver License # _____
Address _____	
Telephone _____	Vehicle: Year _____ Make _____ Model _____
Insured? <input type="checkbox"/> Yes <input type="checkbox"/> No	Vehicle Lic. # _____ Injured? <input type="checkbox"/> Yes <input type="checkbox"/> No Insurance Tel. # _____
Carrier _____	Policy # _____

CONTINUED

Claim for Damages

Please type or print.

CLAIMANT PLEASE COMPLETE THIS SECTION:

8. Describe what occurred (if necessary, you may add another page): Abused by Brian Bergquist, Shift Lead. I was subjected to Intentional Infliction of Emotional Distress, Whistle-blower violations, by shift leader Brian Bergquist, at my job working as a signal inspector for location 64, and cost center 3926.
9. What particular act or omission do you claim caused the injury or damage? Please give a detailed description. I was demeaned and abused for reporting a violent threat and safety issues. My lead shift has punished me for protesting, and because of my gender identity. I was also sent to a sexual orientation conversion clinic by LA M.
10. What property damage or bodily injury do you claim? Give full extent of damage or injury claimed: I was asked improper Severe emotional distress damages, loss of earnings, Q's. denied opportunities and training. Denied transfer.
11. The amount claimed if under \$10,000 as of the date of presentation together with the basis of computation thereof. Attach medical bills and/or repair estimates.
TBD

12. Name(s) and address(es) of witness(es):
LA Metro Employees, Cynthia Rivera, Mai Cowart, Ricardo Moran, Gary Ambrosich, Joseph Cabornida, Erick Huerta, Tuan Nguyen, Joseph Davis, and others.

13. Name(s) and address(es) of doctor(s):

14. Dates of prior claims against the Los Angeles County Metropolitan Transportation Authority (METRO) or Southern California Rapid Transit District (RTD). If none, write "None".
None.

[Signature]
Signature of Claimant

3-2-20
Date

Claims arising after January 1, 1988 must be filed within 6 months from the date of accident. For Law governing filing of claim and statute of limitations as to filing action see Chapter 201 Statutes 1987 (Sec 900 ET SEQ Government Code). For your protection California Law requires the following to appear on this form: Any person who knowingly presents a false or fraudulent claim for the payment of a loss is guilty of a crime and may be subject to fines and confinement in State Prison. Added by Stats. 1989, c. 1119, S 3.

Please mail your claim to:
Metro Board Secretary's Office – Legal Services
One Gateway Plaza, 99-PL-4, Los Angeles, CA 90012-2952

