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THE SUPERIOR COURT
By Xian-xii Bowie, Deputy
CASE NUMBER:
RG19018277

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA
UNLIMITED JURISDICTION

LOI NGO,

Plaintiff,

vs.

UNITED AIRLINES, INC., MOHAMMED
BUKSH, YVONNE PIERCE, and DOES 1 - 10,

Defendants.

Case No. 19018277

**FIRST AMENDED COMPLAINT FOR
DAMAGES AND INJUNCTIVE RELIEF;
DEMAND FOR JURY TRIAL**

1. Employment Discrimination on the Basis of Physical Disability, Mental Disability and Medical Condition;
2. Harassment the Basis of Physical Disability, Mental Disability and Medical Condition;
3. Employment Discrimination on the Basis of National Origin, Ancestry, and Race;
4. Failure to Provide Reasonable Accommodation;
5. Failure to Engage in Interactive Process;
6. Wrongful Termination and Other Adverse Employment Actions In Violation of Public Policy;
7. Invasion of Privacy
8. Intentional Infliction of Emotional Distress;
9. Negligent Supervision and Training;
10. Private Attorney General Act;
11. Failure to Provide Records Pertaining to Employment;
12. Failure to Provide Personnel File.

Plaintiff LOI NGO complains and alleges as follows:

1 **I. SUMMARY OF CLAIMS**

2 1. Plaintiff LOI NGO (“Ngo”) began working for Defendant United Airlines as a
3 mechanic in 1989, when he was 24 years of age. For almost 29 years, Ngo was employed
4 continuously by United at its components base at San Francisco International Airport. He took
5 great pride in maintaining United’s jets despite the hazardous working conditions and injuries
6 sustained over the years. In 2016, Ngo experienced on-the-job injuries and had to seek medical
7 treatment. After a short break from work, he was cleared to return to work with certain physical
8 restrictions. His supervisors, however, were hostile to him and his physical restrictions. They
9 would not grant him scheduling accommodations for him to obtain physical therapy and denied
10 him accommodations in his work conditions that would allow his injuries to heal. Ngo protested
11 and resisted their harassing and discriminatory treatment.

12 2. As a result of the retaliation, harassment and hostile work environment in the
13 aftermath of his 2016 injuries, Ngo developed severe depression and anxiety that resulted in his
14 taking a medical leave of absence. After Ngo recovered sufficiently, he was again cleared to return
15 to work with the same restrictions and told to report back to his worksite, but his supervisors
16 turned him away and tried to confiscate his employee badge. Devastated, Mr. Ngo was again
17 forced to take protected medical leave.

18 3. After some weeks he was cleared by his doctors once again to return to work, this
19 time with an additional requested accommodation of a temporary part-time schedule to ease him
20 back into the workplace. But United and his supervisors again refused to let him return to work.
21 Instead of responding to Ngo’s request for help with accommodations, United and his supervisors
22 accused him of being absent without cause and threatened him with discipline if he did not show
23 up in person to be subjected to investigation as to the reasons for his absence.

24 4. In the course of these events, Ngo was asked impermissible, non-job-related
25 questions, denied employment benefits and privileges, denied reasonable accommodation for
26 disability and medical condition, denied medical leave, denied work opportunities, unjustly
27 reprimanded, denied an interactive process to determine accommodation, harassed, denied a work
28 environment free of discrimination and retaliation, denied work opportunities, and terminated.

1 5. Ngo experienced a continuing course of discrimination and harassment, ending
2 with termination, by Defendants United, Buksh and Pierce, because of his actual or perceived
3 ancestry, color, disability, medical condition, medical leave, national origin (including accented
4 English as a second language), and race. Ngo experienced retaliation by Defendants United, Buksh
5 and Pierce because he resisted discrimination and harassment, requested an accommodation of
6 disability and medical condition, and used medical leave. Defendant United failed to take
7 reasonable steps to prevent discrimination, harassment and retaliation by Buksh and Pierce against
8 Ngo. And after he was fired, Ngo’s multiple requests for his payroll and personnel records were
9 utterly ignored by United, its local management and Human Resources.

10 6. Plaintiff endured continuous and repeated callous mistreatment at his work.
11 Defendants’ firing him on the heels of protected medical leave has severely damaged him and
12 effectively ended his career. Plaintiff files suit to vindicate his rights under California law.

13 **II. JURISDICTION AND VENUE**

14 7. This case is properly before this Court because it involves issues of state law, all
15 Defendants do business in the state of California, and all events which caused Ngo damage
16 occurred in the state of California, some in the County of Alameda.

17 8. Venue is proper in the Superior Court of Alameda County under Code of Civil
18 Procedure § 395 because Defendant United Airlines, Inc. does not reside in California and has not
19 designated a California county in which it maintains its principal local office.

20 **III. THE PARTIES**

21 9. Plaintiff LOI NGO (“Ngo”) was an employee of United from May 1989 to March
22 2, 2018, stationed in the Component Maintenance operations of United at San Francisco
23 International Airport (“SFO”), located at 800 South Airport Blvd, San Francisco, California. At all
24 relevant times, he was a technician, a unionized position.

25 10. Ngo is an immigrant from Vietnam whose first language is Vietnamese and who
26 speaks English with a foreign accent. At the time of termination, he was 53 years-old.

27 11. Defendant UNITED AIRLINES, INC. (“United”) is a Delaware corporation with
28 its principal place of business in Illinois. It is one of the largest airlines in the world. In the San

1 Francisco Bay Area, it employs over 12,000 people.

2 12. Defendant MOHAMMED BUKSH (“Buksh”) is currently a Senior Manager in
3 Components Maintenance employed by United at SFO. At all relevant times, Buksh was a skip-
4 level supervisor of Ngo. Buksh is of South Asian descent and came to the United States from the
5 Pacific island of Fiji.

6 13. Defendant YVONNE PIERCE (“Pierce”) is currently a supervisor working under
7 Buksh. At all relevant times, Pierce was Plaintiff’s direct supervisor. Pierce is African-
8 American/Black and U.S.-born.

9 14. Plaintiff is unaware of the true identities of those Defendants sued herein as DOES
10 1 through 10, inclusive, and therefore sue such Defendants by the fictitious names. Ngo is
11 informed and believes and thereon alleges that each of the above fictitiously named Defendants
12 negligently or intentionally engaged in wrongdoing with respect to the matters alleged herein, or,
13 alternatively, authorized or ratified such wrongdoing, and that each of the fictitiously named
14 Defendants is responsible in some manner for the damages suffered by Ngo. Plaintiff will seek
15 leave of Court to amend this Complaint to show the true names and capacities of the fictitiously
16 named Defendants when they have been ascertained.

17 15. Plaintiff is informed and believes and thereon alleges that each Defendant
18 herein at all times was acting as the authorized or ostensible agent and/or employee of each of the
19 remaining Defendants with respect to the allegations contained herein and that each such agent
20 and/or employee in doing the things herein alleged was acting within the course and scope of such
21 agency and/or employment.

22 **IV. FACTUAL ALLEGATIONS COMMON TO ALL CAUSES OF ACTION**

23 16. Ngo joined United as a 24-year-old. He was employed for nearly 30 years when he
24 was fired on March 2, 2018 during a medical leave of absence. At United’s SFO maintenance
25 base, Ngo worked on maintaining aircraft components in the Components Shop (known within
26 United code as SFOLX). In recent years, he worked as a sheet metal technician. As a sheet metal
27 technician, his job involved fabricating, repairing and overhauling sheet metal parts.

28 17. On April 27, 2016, Ngo experienced an injury on the job to his right thumb. He

1 obtained medical treatment from United's contract medical clinic (Concentra) and was cleared to
2 return to work with certain physical restrictions, namely a 15-pound lifting restriction and
3 instructions to reduce the use of his right upper body at work.

4 18. Ngo's injury was caused by United forcing him to use an outdated sanding
5 machine. The machine required both hands to operate. Ngo was right-handed and was under
6 doctor's orders to restrict his use of his right arm and right upper body.

7 19. Despite knowing this restriction, Defendant Pierce forced Mr. Ngo to continue
8 sanding using the same machine. She forced him to rely on his left arm and left upper body to
9 operate a sanding machine that required two hands to use. She kept saying, "you have to use this
10 machine," and "you have to finish the job." At one point, a coworker of Plaintiff's spoke up for
11 him and said to Defendant Pierce, "Yvonne, you know his rights, why you are uncaring and mean
12 about his needs?" and "You know he is right-handed? He is in pain." Defendant Pierce responded
13 that Plaintiff must continue and finish the sanding work. Pierce also refused to allow him to take
14 adequate breaks to relieve the physical strain that his body was experiencing.

15 20. Defendant Buksh supported Defendant Pierce's forcing Plaintiff to use the outdated
16 sanding machine while in pain, in defiance of his doctor-ordered work restriction.

17 21. In the sheet metal maintenance operation, there was plenty of work available that
18 Ngo could do, and in fact had performed in the past, that would not have violated his doctor-
19 ordered physical restrictions. Defendants Buksh and Pierce intentionally refused to shift Ngo to
20 work that would have accommodated his physical restrictions and intentionally kept him on the
21 physically strenuous labor that was entirely inappropriate for him.

22 22. On May 2, 2016, Ngo experienced an injury to his left elbow due to the stress of
23 relying on his left side of his body while working on the sanding machine.

24 23. Before Ngo's injuries, United already had a new sanding machine that was less
25 strenuous and less likely to cause and exacerbate injury, but it was just sitting in storage. United
26 had purchased the machine at great cost and it was designed to prevent the very types of injuries
27 that Ngo suffered. Defendants Buksh and Pierce knew about the new machine at all times. Despite
28 Ngo's first injury, and despite the fact that he was in pain trying to use the old machine, they

1 refused to bring out the new machine and otherwise refused to even consider alleviating his
2 working conditions. Defendants Buksh and Pierce could have deployed the new machine and
3 intentionally did not do so.

4 24. Defendants Buksh's and Pierce's actions were cruel and outrageous and so altered
5 working conditions as to make it not just more difficult, but intentionally painful and injurious, for
6 Ngo to do his job.

7 25. After the second physical injury, Ngo was examined by doctors arranged by United
8 and was ordered to undergo physical therapy. Again, United cleared him to return to work with
9 certain known and documented physical restrictions on his work.

10 26. Meanwhile, in June 2016, Ngo filed claims for workers' compensation for his April
11 2016 and May 2016 thumb and elbow injuries.

12 27. When Ngo went back at work, Buksh and Pierce made it difficult for Ngo to
13 undergo the necessary physical therapy. They denied Ngo time off and other scheduling
14 accommodations in order for him to travel to the Concentra clinic where United had arranged for
15 him to receive care.

16 28. Ngo experienced a continuous hostile work environment created by his managers,
17 Defendants Buksh and Pierce, throughout his time under their supervision.

18 29. Among other things, Defendant Pierce demonstrated hostility toward Ngo by
19 referring to Ngo's son as "your retarded son" in connection with Plaintiff's request to take a little
20 time off to care for his disabled son.

21 30. Defendant Pierce treated Plaintiff worse than other workers in response to
22 Plaintiff's request for time off for family medical reasons.

23 31. Buksh and Pierce treated other workers who were not East Asian immigrants like
24 Mr. Ngo better. Generally, Ngo was assigned particularly dirty jobs while non-East Asian
25 immigrants— such as whites and blacks – were not assigned dirty jobs. Other workers (not East
26 Asian or not immigrants) who needed time off or scheduling accommodations for medical reasons
27 were given permission to go to their medical appointments. Others (not East Asian or not
28 immigrants) who suffered occupational injuries and needed physical therapy in San Francisco

1 were allowed time off to go to therapy. In fact, United would often cover their transportation costs
2 or arrange a van to ferry them to the appointments in San Francisco. Ngo's management did not
3 allow Ngo to enjoy similar privileges and benefits.

4 32. Buksh and Pierce were overtly hostile to Ngo's requests for scheduling
5 accommodations to attend physical therapy. Ngo asked them numerous times for the time off
6 necessary to go to the Concentra clinic for physical therapy. In response, Buksh and Pierce would
7 consistently give him the run-around and ask him to get approval from the other person. Buksh
8 and Pierce routinely and ordinarily approved other workers to leave the worksite for physical
9 therapy sessions.

10 33. Because of his local supervisors' disapproval of scheduling accommodations, from
11 May 2016 to March 2017 Ngo was only able to go to physical therapy once.

12 34. Ngo resisted harassment from Buksh and Pierce. Notably, they repeatedly asked
13 him about the details of his medical conditions, even though all they were entitled to know were
14 the post-injury work restrictions that had been approved by United.

15 35. For example, Buksh pressed Ngo to give him a copy of a medical form used to
16 support renewal of qualification to use a particular piece of equipment. United asked employees to
17 fax the form to the United Medical department at headquarters (Chicago). Ngo refused to give his
18 filled out form to Buksh despite Buksh's repeated requests. Ngo told Buksh that he felt it was
19 private and confidential medical information. Buksh tried to enlist a union representative to
20 pressure Ngo, without success.

21 36. On another occasion, Buksh and Pierce searched Ngo's tool box for medical
22 reports. When Ngo saw that Buksh was holding and reading his medical reports, Ngo protested.
23 Buksh said, "Do you mind." Ngo replied, "Yes, I mind." Buksh did not stop reading, so Ngo told
24 him directly, "I need a union rep," and walked away fast to get a union representative to come
25 over to help him stop his supervisors from intruding into his medical privacy.

26 37. Buksh and Pierce consistently demonstrated hostility to Ngo's needs for
27 accommodations for his temporary physical limitations. They did not honor his physical
28 restrictions and tried to obtain additional medical information that they were not entitled to. They

1 treated Ngo in a manner that made it clear that they would not tolerate or accommodate him,
2 because he was not 100% healed.

3 38. Buksh and Pierce created a hostile work environment for Ngo and subjected him to
4 excessively harsh standards because of his race, ethnicity, national origin, and foreign accent.
5 They did not treat non-East Asian immigrants who had medically related needs in such a manner.

6 39. As a result of the hostile work environment, Ngo's physical injuries to thumb and
7 arm did not recover as they could have and, further, Ngo developed anxiety and depression and
8 related mental health symptoms that he did not previously have.

9 40. As a result, Ngo was forced to take an extended, unpaid medical leave of absence
10 to receive treatment for his medical conditions and/or temporary disabilities.

11 41. Buksh and Pierce's bias against Ngo manifested much earlier. Before the 2016
12 injuries, Buksh and Pierce had conducted themselves towards Ngo in a manner that demonstrated
13 hostility to any medically-required physical restrictions that Ngo had. Before Ngo came to be
14 supervised by Buksh and Pierce, while working in another unit at United's SFO maintenance base,
15 Ngo suffered an on-the-job accident involving a neck injury. The subsequent workers'
16 compensation matter resulted in a permanent lifting restriction (no lifting over 40 pounds) being
17 placed in his file. Ever since they found out about that restriction, Buksh and Pierce were hostile to
18 Ngo. Indeed, when Ngo was in the process of transferring to Pierce's supervision for the first time,
19 upon learning of Ngo's lifting restriction, Pierce expressed to Human Resources that she only
20 wanted 100% workers. Subsequently, Buksh tried to persuade Ngo to find a doctor who would be
21 willing to support clearing the 40-pound lifting restriction from the file. Ngo understood that
22 Buksh wanted the paperwork to reflect that Ngo as 100% healed and without any physical
23 limitations, even though that was not true.

24 42. In short, even before Ngo's 2016 injuries, Pierce and Buksh had discriminated
25 against Ngo on the basis of his having a history of past injuries and physical restrictions in his
26 personnel records at United. The hostility toward workers with a history of health impairment and
27 preference for only 100% healed workers were embedded among the management.

28 43. Buksh and Pierce's treatment of Ngo in 2016 and 2017 were consistent with their

1 earlier treatment of him. Buksh and Pierce’s discriminatory treatment of Ngo continued in their
2 handling of Ngo’s attempts to return to work in 2017.

3 44. Throughout all relevant times in 2017, United had information from the workers’
4 compensation proceeding about the nature and extent of Ngo’s physical and mental health
5 conditions. United was under an ongoing obligation to engage in good faith and in a continuous
6 manner with Ngo in an interactive process to attempt to accommodate Ngo’s conditions.

7 45. By May 2017, Ngo recovered from his mental health conditions sufficiently to be
8 able to return to work. On May 9, 2017, Ngo reported to work with his doctor’s note clearing him
9 to return to work with the same physical restrictions that were in place when he returned to work
10 in 2016.

11 46. Buksh and Pierce rejected his attempt to return to work in May 2017. They sent
12 him home saying that he needed to get approval from headquarters first. Their conduct was a
13 striking departure from normal practices and betrayed an animosity targeted at Ngo.

14 47. As a result of this rejection, Ngo was forced to continue a medical leave of absence.
15 He also suffered emotionally from the rejection and required further treatment for his mental
16 health conditions. He requested and received extensions on his unpaid leave of absence from
17 United Medical. Ngo recovered sufficiently to receive clearance from both his health provider and
18 United to return to work again in August 2017.

19 48. Ngo reached out to the United Medical department at United headquarters in
20 Illinois and provided his doctor’s certification clearing him to return to work. He obtained United
21 Medical’s permission to return to work as of August 10, 2017. United Medical told him to report
22 to work on August 10, 2017 and if any questions arose, local management should call United
23 Medical.

24 49. On August 10, 2017, Ngo reported to work at SFO. Ngo would not have attempted
25 to report to his worksite, given the rejection he experienced in May 2017, had it not been for
26 United Medical’s assurance that he was cleared to return to work.

27 50. When Ngo arrived at the Components base, Pierce and another manager, Hani
28 Tarazi, told him he could not be there. Ngo told them that United Medical had cleared him to

1 return and asked them to contact United Medical for clarification. On the spot, Pierce and Tarazi
2 refused to contact United Medical.

3 51. Even worse, Pierce tried to confiscate Ngo's badge, to Ngo's shock and
4 embarrassment. Another manager happened to be nearby and intervened, telling Pierce that Ngo
5 was still a United employee so long as he is on a medical leave, and that she cannot confiscate his
6 badge. Ngo left the worksite feeling deflated, dejected, humiliated and traumatized.

7 52. This was targeted harassment of and discrimination against Ngo. Ngo has seen
8 numerous employees go on medical leave and never has he seen or heard of anyone getting
9 rejected in similar fashion when they attempted to report back to work.

10 53. Ngo's local management did not respond to Ngo's request that it communicate with
11 United Medical to facilitate his return to work.

12 54. Because of his management's hostile rejection of his attempt to return to work on
13 August 10, 2017, Ngo he suffered severe emotional distress and was forced to request an
14 extension of his unpaid leave. He regularly submitted doctor's certifications supporting extensions
15 of his leave. In response, United Medical consistently confirmed that his extended leave of
16 absence was approved.

17 55. To Ngo's knowledge, United approved his leave on the basis of doctor's notes from
18 Kaiser. Because of his pending workers' compensation case, United was also receiving medical
19 reports about Ngo's physical and mental health conditions in 2017.

20 56. Even though his leave of absence had been authorized and even though Ngo
21 desired to return to work and in fact reported to work on August 10, 2017, Ngo's local
22 management accused him otherwise. This was cruel and outrageous and calculated to inflict
23 distress on Plaintiff, who was already vulnerable by virtue of being on medical leave as a result of
24 the cumulative hostile work environment, harassment, failure to honor his doctor-ordered
25 restrictions, and overtly hostile and biased remarks and actions of his managers.

26 57. On or about August 23, 2017, August 28, 2017, and September 13, 2017, manager
27 Mohammed Buksh sent letters accusing Ngo of failing to return to work. Buksh ordered him to
28 report to SFO on short notice for investigation into why he failed to return to work and fact-

1 finding into the basis for his absence from work. Buksh falsely claimed that Ngo did not report
2 back to work, did not communicate with United, and did not inform United of his need for
3 additional time off. Buksh threatened disciplinary action. Buksh also falsely claimed that Ngo's
4 absences since August 10, 2017 were unauthorized. Buksh cited a rule in the collective bargaining
5 agreement that "employees are subject to discharge if they are absent from work for two (2)
6 consecutive days without notifying the Company of the reason for their inability to work." Buksh
7 threatened that "the Company is well within its rights to terminate your employment."

8 58. Receiving such punitive disciplinary notices which he was on a medical leave of
9 absence – one that was directly caused by his managers' rejection of his attempts to return to work
10 – caused Ngo further anxiety and distress. This was cruel and outrageous and calculated to inflict
11 distress on Plaintiff, and constituted interference with his approved medical leave.

12 59. Ngo continued to communicate with United Medical about his desire to return to
13 work. On or about September 1, 2017, Ngo sent to United a reasonable accommodation request
14 signed by his doctor asking that he return to work with a temporary part-time schedule.
15 Specifically, Ngo's doctor supported the request that starting September 20, 2017, he work 5 hours
16 per day for the first three days, increasing to to 6 hours per day the following week, and returning
17 to full-time shifts starting October 2, 2017.

18 60. United did not respond at all to Ngo's September 1, 2017 request to return to work
19 with this temporary part-time schedule.

20 61. On September 6, 2017, while Ngo and his children were at home, police officers in
21 his city of residence, Pleasanton, knocked on his door. The two police officers on his doorstep
22 informed Ngo that his employer had sent them to check on him. Ngo was upset and distressed that
23 his employer would send the police to his house, and his distress was heightened by seeing that the
24 police officers' visit frightened his children.

25 62. Buksh called the Pleasanton police to request the welfare check. Before calling the
26 police, at no time did United or its agents, such as Buksh or Pierce, attempt to reach Ngo's spouse,
27 who was the emergency contact in Ngo's personnel file. Buksh knew that Ngo was on a medical
28 leave of absence and knew that Ngo had a pending workers' compensation case. Ngo's

1 supervisors and managers, as well the Human Resources department at SFO, knew or should have
2 known that Ngo maintained contact with United Medical at headquarters on a regular basis about
3 his leave of absence and his desire to return to work with appropriate accommodations. Sending
4 the police to Ngo's house was unreasonable and threatening, on the heels of the disciplinary
5 letters. It was further targeted harassment and discrimination by Ngo's local management at SFO.

6 63. By engaging in the above actions, Defendants Pierce and Buksh violated all
7 standards of basic decency. Any reasonable person who, if genuinely concerned about a person
8 well-being, and knowing that the person was likely having medical issues, would have made
9 reasonable inquiries within the company's own records, inquired with coworkers, friends or
10 family members, before threatening to fire the person and sending the police to the person's house.
11 Defendants did none of these things and instead, during Plaintiff's approved medical leave,
12 reprimanded and threatened him in writing and sent the police to his house to investigate him for
13 alleged unauthorized absence from work.

14 64. In so doing, Defendants invaded Plaintiff's right to privacy during his medical
15 leave.

16 65. Defendants' Buksh and Pierce's actions were not merely accidental or incompetent,
17 but intentional, cruel, and calculated to make conditions intolerable for Plaintiff. Their conduct
18 towards Plaintiff was abnormal in the extreme and flouted widely accepted community norms of
19 acceptable employer conduct. Defendants Buksh and Pierce abused their power and authority and
20 exploited Plaintiff's vulnerability in an outrageous manner.

21 66. On or about September 22, 2017, Ngo sent to United Medical a new note from his
22 doctor at Kaiser Permanente requesting that United respond to the previous requested
23 accommodation (e.g. return to work with a temporary part-time schedule starting September 20,
24 2017). Out of concern that United would continue to ignore his request to return to work, his
25 doctor also stated that in the event United did not respond to the request, Ngo should be
26 considered temporarily unable to return to work, for medical reasons. On or about September 22,
27 2017, Ngo called United Medical to verbally follow up on the accommodation request and return
28 to work issue. United Medical's representative stated the company would follow up.

1 67. United never responded to Ngo’s reasonable accommodation request. The company
2 never engaged in an interactive process regarding his work-schedule (including the temporary
3 part-time request). The company never engaged with Ngo to facilitate his return to work.

4 68. Instead, on or about October 4, 2017, United Medical sent Ngo two letters asserting
5 that his absence from work from September 20, 2017 onward was not sufficiently supported. The
6 letter surprised and confused Ngo, because it was a sudden change from the previous approvals of
7 medical leave and it ignored the current situation in which Ngo was actually requesting United’s
8 assistance in returning to work with a minor part-time scheduling accommodation.

9 69. United’s October 4, 2017 letter did not explain why his medical leave was suddenly
10 considered unsupported. The letter did not acknowledge that Mr. Ngo was requesting to return to
11 work, was cleared to return to work by his medical providers and had a pending request for a
12 temporary part-time schedule. Instead, in vague boilerplate, the letter requested medical
13 information about ongoing treatment, such as medical and therapy procedures and medications,
14 that was of the type of information request that might be directed at those employees who required
15 continuation of leave of absence. The letter was generic and not at all individualized for Ngo.

16 70. United never explained why Ngo’s previous communications about his medical
17 leave and requested scheduling accommodation were insufficient. United never explained why the
18 documentation that it had received from Ngo and from his workers’ compensation case was
19 insufficient.

20 71. On October 13, 2017, Ngo sent a letter to Buksh and to the Human Resources
21 department of United. In the letter, Ngo stated: “I am writing this letter to request a written list of
22 what you need from me to be able to return to work successfully. My doctors feel I can return to
23 work, however, we need to know what is needed to make this possible. The last time I was
24 released to return to work by my doctors on August 10, 2017, I showed up to work and was
25 refused by Hani Tarazi and Yvonne Pierce. At that time, I had been released by my doctors and
26 given clearance by United Medical in Chicago. I asked Tarazi to call United Medical to confirm
27 with them of my clearance to go back to work, but he refused to do so. I ask for a response from
28 you as soon as possible so I can return to work.”

1 72. Ngo received no response to his letter whatsoever. No one in his management, in
2 Human Resources (local or Chicago), or in United Medical communicated with him about his
3 request to return to work starting with one week and a half of part-time work. No one engaged in
4 an interactive process with him to determine the appropriate conditions for his return to work. To
5 the extent United communicated with him, the communication was either vague or generic or
6 harsh and hostile.

7 73. As a result of Defendants' treatment of him, Ngo continued to experience anxiety
8 and depression. Meanwhile, even though Ngo wanted to return to work, Ngo had no choice to but
9 to continue to send doctor's reports to United Medical to support his continued leave of absence
10 from September 2017 onward.

11 74. On or about November 22, 2017, United Medical sent a letter to Ngo stating that he
12 is required to report for a medical evaluation at Concentra on December 5, 2017 and to bring any
13 medical documentation pertinent to his absence from work. The letter claimed that he had a
14 conversation with United Medical where he agreed to the specific medical evaluation
15 appointment, even though he had not arranged any appointment through United Medical. The
16 letter was generic and contained no information indicating it was based on Ngo's individual
17 situation. The letter did not reference or acknowledge Ngo's medical documentation that United
18 already possessed and it did not reference Ngo's October 13, 2017 correspondence.

19 75. Ngo did not go to this Concentra appointment because he was confused why he had
20 to undergo a medical evaluation from United and why the letter claimed that he had agreed to this
21 appointment.

22 76. In the next few weeks, Ngo received one or two additional such letters directing
23 him in generic and vague terms to submit to a medical evaluation. He did not attend these medical
24 evaluations because no one from United explained the reason and purpose of the evaluation, and
25 because he was still suffering from mental health issues caused by United's rejection of his return-
26 to-work and his management's hostile communications to him.

27 77. At all times, Ngo submitted doctor's notes to United notifying United of his need
28 for extensions of leave. He always remained in contact with United, through his transmissions to

1 United Medical and through his ongoing workers' compensation case.

2 78. United's local managers, who were prejudiced against Ngo, purposefully interfered
3 with Ngo's medical leave.

4 79. On or about March 2, 2018, Ngo received from Buksh a letter of termination of
5 employment. In it, Buksh wrote, in part: "You failed to medically support your absence and make
6 contact with your Supervisor and/or Manager, over a period of several months. Your absence,
7 since September 20, 2017 is unsupported, and therefore unauthorized. Per Article 10, Section C of
8 the United agreement with the IBT, employees are discharged from the Company when failing to
9 appear for work on two consecutive days without contacting the company."

10 80. The termination package stated: "Not Returning from Leave." "Eligible for Re-
11 Hire: No." "Recommended for Re-Employment: Not Dependable, not recommended for rehire."

12 81. In fact, United's termination reason was a pretext, as his managers had been
13 determined to block Ngo's return to work and had a longstanding desire to fire him due to bias
14 against Ngo's actual or perceived disability, medical condition, his race, ethnicity, national origin
15 and/or ancestry, and his opposition to their attempted invasions of privacy. Ngo's local
16 management, including Buksh, invoked the "failing to appear for work on two consecutive days"
17 policy as a pretext for firing Ngo.

18 82. The termination letter from Defendant Buksh included handwritten receipts for
19 supposed final wages signed by Buksh, but no itemized wage statement and no paychecks for
20 Plaintiff to cash. At the same time, Plaintiff received a direct deposit from United that was
21 approximately \$5,000 less than the amount on the handwritten receipts signed by Buksh. When
22 Plaintiff called Buksh and United to ask about his missing final pay, he received no response.
23 When Plaintiff requested his payroll records from United on multiple occasions after receiving the
24 termination letter, he received no response.

25 83. At all relevant times, Ngo's local management imposed a 100% healed policy on
26 Ngo and tried to dodge the requirement of providing an individualized accommodation of Ngo's
27 disability and/or medical condition. They did not care that Ngo was able to perform the essential
28 functions of his current position with accommodations and that there were also fitting

1 reassignments that could be offered without undue burden on United.

2 84. At all times herein mentioned Ngo has been and is able to perform all of the
3 essential functions of his former position. Alternatively, United could have offered any number of
4 different positions to Ngo. And even if it could not find a position for Ngo to start on a given day,
5 there was no undue burden for United to continue extending Ngo's leave, because of the size of its
6 workforce at the SFO maintenance base and the diverse array of available work for someone of
7 Ngo's experience and skills.

8 85. It was United's own failure to accommodate Ngo, through the conduct of local
9 management, Human Resources, and United Medical, that caused Ngo's absence from work.
10 United was on notice at all relevant times of the nature of Ngo's temporary disabilities and
11 medical conditions. United had an obligation to engage in an interactive process with Ngo to
12 facilitate his return to work. United failed to provide the interactive process and individualized
13 assessment tailored to Ngo's situation, and permitted local managers to target Ngo for harassment
14 and retaliation.

15 86. Ngo had a reasonable expectation of privacy in the details of his medical affairs and
16 United had a duty to him to prevent unnecessary intrusions by parties without a legitimate need to
17 know. Ngo had a reasonable expectation that information about his medical leave of absence and
18 medically related accommodation requests would be handled responsibly by United's Medical
19 department and Human Resources and without unnecessary disclosures.

20 87. Based on the foregoing events, Defendants have engaged in a continuing course of
21 unlawful conduct by violating previously granted accommodations, refusing reasonable
22 accommodation, and engaging in disability harassment and retaliation.

23 88. Based on the foregoing events, Defendant United failed to reasonably train and
24 supervise its employees and agents and failed to prevent discrimination, retaliation and
25 harassment.

26 89. Through their wrongful conduct, Defendants have deprived Ngo of income and
27 various employment benefits and privileges, including employee health benefits, long term
28 disability benefits, and other fringe benefits, and caused Ngo pain and suffering and emotional

1 distress.

2 90. As a direct, foreseeable and proximate result of Defendants' outrageous conduct as
3 alleged herein, Plaintiff has lost income, employment and career opportunities and incurred other
4 economic loss, including future earning capacity, attorneys' fees, legal expenses, and other
5 pecuniary loss, in an amount that exceeds the minimum jurisdictional limits of this court, the
6 precise amount of which will be proved at trial.

7 91. As a direct, foreseeable and proximate result of Defendants' outrageous conduct as
8 alleged herein, Plaintiff has suffered severe emotional and mental distress, anguish, humiliation,
9 embarrassment, fright, shock, pain, discomfort, anxiety, loss of enjoyment of life and other general
10 damages in an amount that exceeds the minimum jurisdictional limits of this court, the precise
11 amount of which will be proved at trial.

12 92. In doing the things herein alleged, Defendants were guilty of oppression, fraud and
13 malice, and, insofar as the things alleged were attributable to employees of Defendants, said
14 employees were employed by Defendants with advance knowledge of the unfitness of the
15 employees and they were employed with a conscious disregard for the rights of others; or
16 Defendants authorized or ratified the wrongful conduct; or there was advance knowledge,
17 conscious disregard, authorization, ratification or act of oppression, fraud or malice on the part of
18 an officer, director or managing agent of Defendants all entitling plaintiff to the recovery of
19 exemplary and punitive damages.

20 93. Plaintiff has exhausted all administrative remedies. On May 8, 2018, was issued a
21 right-to-sue notice from the California Department of Fair Employment and Housing.

22 **FIRST CAUSE OF ACTION**
23 **EMPLOYMENT DISCRIMINATION ON THE BASIS OF PHYSICAL DISABILITY,**
24 **MENTAL DISABILITY AND MEDICAL CONDITION**
25 **California Government Code § 12940(a)**
26 **(Against Defendant United Airlines and DOES 1-10)**

27 94. Plaintiff re-alleges and incorporates by reference all previous paragraphs as though
28 fully set forth herein.

95. In doing the things herein alleged, Defendants violated the California Fair

1 Employment and Housing Act (FEHA) by taking adverse employment actions against plaintiff –
2 harassment, retaliation, disciplinary actions and warnings and termination, and other inferior
3 treatment because of his actual or perceived physical disability, mental disability and medical
4 condition, and/or record/history of a health impairment.

5 96. Defendant United is liable for all adverse actions perpetuated on Ngo by its
6 employees and agents.

7 97. Plaintiff had a physical and/or mental disability or medical condition as defined in
8 California Government Code § 12926. Defendants knew he had such disability and/or condition
9 and treated and regarded him as such.

10 98. Plaintiff has exhausted all administrative remedies and, on May 8, 2018, was issued
11 a right-to-sue notice from the California Department of Fair Employment and Housing.

12 WHEREFORE, Plaintiff prays for relief as set forth below.

13 **SECOND CAUSE OF ACTION**
14 **HARASSMENT ON THE BASIS OF PHYSICAL DISABILITY, MENTAL DISABILITY**
15 **AND MEDICAL CONDITION**
16 **California Government Code § 12940(a)**
17 **(Against All Defendants and DOES 1-10)**

18 99. Plaintiff re-alleges and incorporates by reference all previous paragraphs as though
19 fully set forth herein.

20 100. In doing the things herein alleged, Defendants violated the California Fair
21 Employment and Housing Act (FEHA) by taking adverse employment actions against plaintiff –
22 harassment, retaliation, disciplinary actions and warnings and termination, and other inferior
23 treatment because of his actual or perceived physical disability, mental disability and medical
24 condition, and/or record/history of a health impairment.

25 101. Defendants Buksh and Pierce, as supervisors of Plaintiff, are liable for workplace
26 harassment under FEHA. Defendant United is liable for all adverse actions perpetuated on Ngo by
27 its employees and agents.

28 102. Plaintiff had a physical and/or mental disability or medical condition as defined in
California Government Code § 12926. Defendants knew he had such disability and/or condition

1 and treated and regarded him as such.

2 103. Plaintiff has exhausted all administrative remedies and, on May 8, 2018, was issued
3 a right-to-sue notice from the California Department of Fair Employment and Housing.

4 WHEREFORE, Plaintiff prays for relief as set forth below.

5 **THIRD CAUSE OF ACTION**
6 **EMPLOYMENT DISCRIMINATION ON THE BASIS OF NATIONAL ORIGIN,**
7 **ANCESTRY AND RACE**

8 **California Government Code § 12940(a)**
9 **(Against Defendant United Airlines and DOES 1-10)**

10 104. Plaintiff re-alleges and incorporates by reference all previous paragraphs as though
11 fully set forth herein.

12 105. In doing the things herein alleged, Defendants violated the California Fair
13 Employment and Housing Act by taking adverse employment actions against Plaintiff because of
14 his actual or perceived national origin, ancestry and race, including his accented English.

15 WHEREFORE, Plaintiff prays for relief as set forth below.

16 **FOURTH CAUSE OF ACTION**
17 **FAILURE TO PROVIDE REASONABLE ACCOMMODATION**

18 **California Government Code § 12940(m)**
19 **(Against Defendant United and DOES 1-10)**

20 106. Plaintiff re-alleges and incorporates by reference all previous paragraphs as though
21 fully set forth herein.

22 107. In doing the things herein alleged, Defendant United violated the California Fair
23 Employment and Housing Act by failing and refusing to provide him with reasonable
24 accommodations.

25 WHEREFORE, Plaintiff prays for relief as set forth below.

26 **FIFTH CAUSE OF ACTION**
27 **FAILURE TO ENGAGE IN INTERACTIVE PROCESS**

28 **California Government Code § 12940(n)**
(Against Defendant United and DOES 1-10)

108. Plaintiff re-alleges and incorporates by reference all previous paragraphs as though
fully set forth herein.

1 109. In doing the things herein alleged, Defendant United violated the California Fair
2 Employment and Housing Act by failing to engage in a timely, good faith, interactive process with
3 the employee or applicant to determine effective reasonable accommodations, if any, in response
4 to a request for reasonable accommodation by an employee or applicant with a known physical or
5 mental disability or known medical condition.

6 WHEREFORE, Plaintiff prays for relief as set forth below.

7 **SIXTH CAUSE OF ACTION**
8 **WRONGFUL TERMINATION AND OTHER ADVERSE EMPLOYMENT ACTIONS IN**
9 **VIOLATION OF PUBLIC POLICY**
10 **California Government Code § 12940(n)**
11 **(Against Defendant United and DOES 1-10)**

12 110. Plaintiff re-alleges and incorporates by reference all previous paragraphs as though
13 fully set forth herein.

14 111. California has a fundamental, substantial and well-established public policy against

15 112. discrimination against employees because of disability, medical condition,
16 ethnicity, race and national origin. California also has a fundamental, substantial and well-
17 established public policy of protecting the privacy of the individual. These public policies are
18 found in the Fair Employment and Housing Act and the Constitution of the State of California, as
19 well as other statutes and regulations.

20 113. In doing the things herein alleged, Defendant United violated the public policy of
21 the State of California.

22 WHEREFORE, Plaintiff prays for relief as set forth below.

23 **SEVENTH CAUSE OF ACTION**
24 **INVASION OF PRIVACY – INTRUSION INTO PRIVATE AFFAIRS**
25 **(Against Defendants United and Buksh and DOES 1 – 10)**

26 114. Plaintiff re-alleges and incorporates by reference all previous paragraphs as though
27 fully set forth herein.

28 115. Plaintiff's whereabouts and activities while on medical leave and off-duty was
private and confidential. Plaintiff had a reasonable expectation of privacy in his activities and
whereabouts while on medical leave and off-duty.

1 116. Plaintiff's house and property, in Pleasanton, is a private residence and Plaintiff
2 had a reasonable expectation of privacy in his own home.

3 117. Defendant Buksh intentionally intruded on Plaintiff's privacy when he sent local
4 police to Plaintiff's house on in early September 2019.

5 118. This intrusion would be highly offensive to a reasonable person.

6 119. Plaintiff was harmed as a result, and Defendants' conduct was a substantial factor
7 in causing Plaintiff's harm.

8 120. WHEREFORE, Plaintiff prays for relief as set forth below.

9 **EIGHTH CAUSE OF ACTION**
10 **INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS**
11 **(Against All Defendants and DOES 1-10)**

12 121. Plaintiff re-alleges and incorporates by reference all previous paragraphs as though
13 fully set forth herein.

14 122. Defendants' conduct as described above was extreme and outrageous and outside
15 of the bounds of normal supervisory conduct and personnel actions.

16 123. Defendants' conduct was done with the intent of causing Plaintiff to suffer
17 emotional distress or with reckless disregard as to whether their conduct would cause him to suffer
18 such distress.

19 WHEREFORE, Plaintiff prays for relief as set forth below.

20 **NINTH CAUSE OF ACTION**
21 **NEGLIGENT SUPERVISION AND TRAINING**
22 **(Against Defendant United and DOES 1-10)**

23 124. Plaintiff re-alleges and incorporates by reference all previous paragraphs as though
24 fully set forth herein.

25 125. In doing the things herein alleged, Defendants Buksh and Pierce were unfit and
26 incompetent as supervisors.

27 126. Defendant United knew or should have known that Buksh and Pierce were unfit or
28 incompetent and that their conduct created a particular risk of harm to Plaintiff and other similarly
situated employees. Defendant United failed to exercise ordinary care in supervising and training

1 Buksh and Pierce.

2 127. Buksh's and Pierce's unfitness and/or incompetence harmed Plaintiff and
3 Defendant United's negligence in supervising and training them caused Plaintiff's harm.

4 WHEREFORE, Plaintiff prays for relief as set forth below.

5 **TENTH CAUSE OF ACTION**
6 **CALIFORNIA PRIVATE ATTORNEY GENERAL ACT VIOLATIONS**
7 **California Labor Code §§ 2698 *et seq.***
8 **(Against Defendant United and DOES 1-10)**

9 128. Plaintiff re-alleges and incorporates by reference all previous paragraphs as though
10 fully set forth herein.

11 129. On or about March 16, 2018, April 4, 2018 and April 11, 2018, Plaintiff sent
12 requests to Defendant United for his payroll and time records, employment agreements, and
13 personnel file. Defendant never responded. Defendant never offered Plaintiff an opportunity to
14 inspect or copy the personnel records that pertain to him and that are covered by Labor Code §§
15 226, 432 and 1198.5.

16 130. The aforementioned wrongful acts and omissions of Defendant are willful
17 violations of California's Labor Code Sections 226(b), 226(c) 432, and 1198.5.

18 131. The policies, acts, and practices described in this Complaint and the ensuing Labor
19 Code violations are ongoing and continuing.

20 132. In accordance with Labor Code Section 2699.3, Plaintiff gave written notice by
21 certified mail to the California Labor and Workforce Development Agency and Defendant United
22 of the Labor Code violations alleged herein on July 6, 2018 and his intent to seek recovery of civil
23 penalties on behalf of the State and current and former aggrieved employees. Plaintiff did not
24 receive written notification from the LWDA of the State's intention to investigate the allegations
25 set forth in Plaintiff's July 6, 2018 certified mail notice. Plaintiff did not receive written notice of
26 cure by Defendant United.

27 133. Plaintiff has also incurred and continues to incur attorneys' fees and legal expenses
28 to prosecute the Labor Code violations.

WHEREFORE, Plaintiff prays for relief as set forth below.

1 **ELEVENTH CAUSE OF ACTION**
2 **FAILURE TO PROVIDE RECORDS PERTAINING TO EMPLOYMENT**
3 **California Labor Code § 226**
4 **(Against Defendant United)**

5 134. Plaintiff re-alleges and incorporates by reference all previous paragraphs as though
6 fully set forth herein.

7 135. Because of its failure to provide a wage statement relating to the final pay upon
8 termination, and its failure to respond to Plaintiff's multiple requests for his personnel records,
9 including time records and payroll records, United has willfully violated Labor Code §§ (a), (b),
10 and (c).

11 136. To date United continues to withhold the records requested long ago.

12 137. Under Labor Code § 226(h) Plaintiff is entitled to injunctive relief and an award of
13 costs and reasonable attorney's fees.

14 **TWELFTH CAUSE OF ACTION**
15 **FAILURE TO PROVIDE PERSONNEL FILE**
16 **California Labor Code § 1198.5**
17 **(Against Defendant United)**

18 138. Plaintiff re-alleges and incorporates by reference all previous paragraphs as though
19 fully set forth herein.

20 139. To date United continues to withhold the personnel file that Plaintiff requested over
21 one year ago.

22 140. Accordingly, Plaintiff is entitled to injunctive relief and an award of costs and
23 reasonable attorney's fees under Labor Code § 1198.5(l).

24 **PRAYER FOR RELIEF**

25 WHEREFORE, Plaintiff requests the following relief against Defendants:

26 A. A preliminary and permanent injunction to obtain Defendant United's compliance
27 with Sections 226 and 1198.5 of the Labor Code;

28 B. Award special damages to Plaintiff for back pay, front pay, lost benefits, medical
expenses and other special damages in an amount to be determined at trial;

C. Award general damages to compensate plaintiff for emotional distress, pain and
suffering and loss of enjoyment of life;

- 1 D. Award penalties available under applicable laws, including PAGA civil penalties;
2 E. Award punitive damages in amount sufficient to punish and deter;
3 F. Award costs and expenses, including reasonable attorneys' fees, costs, and expert
4 fees, pursuant to Government Code § 12965, Labor Code § 2699 and Code of Civil Procedure §
5 1021.5, and all other applicable statutes;
6 G. Award pre-judgment and post-judgment interest, as provided by law; and
7 H. Order such other and further legal and equitable relief as this Court deems necessary,
8 just, and proper.

9 **JURY DEMAND**

10 Plaintiff requests a jury on all causes of action triable by jury.

11 Respectfully submitted,

12 Dated: July 25, 2019

VALERIAN LAW, P.C.

13
14 By:



Xinying Valerian

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16 Attorney for Plaintiff Loi Ngo
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