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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

DAVID F. JADWIN, D.O.

Plaintiff

vs.

COUNTY OF KERN; PETER BRYAN
(both individually and in his former official
capacity as Chief Executive Officer Of
Kern Medical Center); IRWIN HARRIS,
M.D; EUGENE KERCHER, M.D. (both
individually and in his official capacity as a
President of Medical Staff of Kern Medical
Center); JENNIFER ABRAHAM, M.D.
(both individually and in her official
capacity as Immediate Past President of
Medical Staff at Kern Medical Center);
SCOTT RAGLAND, M.D. (both
individually and in his official capacity as
President-Elect of Medical Staff of Kern
Medical Center); TONI SMITH, (both
individually and in her official capacity as
Chief Nurse Executive of Kern Medical
Center); WILLIAM ROY, M.D.; and
DOES 1 through 10, inclusive.

Defendants.

Case No. 1:07-cv-26

**FIRST AMENDED COMPLAINT FOR
DAMAGES AND INJUNCTIVE RELIEF.**

- I. Retaliation [Health & Safety Code § 1278.5];**
- II. Retaliation [Lab. Code § 1102.5];**
- III. Retaliation [Gov't Code §§ 12945.1, *et seq.*; 2 C.C.R. § 7297.7(a)];**
- IV. Interference with FMLA Rights [29 U.S.C. §§ 2601, *et seq.*];**
- V. Violation of CFRA Rights. [Gov't Code §§ 12945.1, *et seq.*];**
- VI. Disability Discrimination [Gov't. Code § 12940(a)];**
- VII. Failure to Provide Reasonable Accommodation [Gov't Code § 12940(m)];**
- VIII. Failure to Engage in Good Faith In An Interactive Process [Gov't Code § 12940(n)];**
- IX. Defamation [Civ. Code §§ 45- 47]; and**
- X. Procedural Due Process Violation [14th Amendment of U.S. Constitution; 42 U.S.C. § 1983].**
- XI. Violation of FLSA [29 U.S.C. §201 *et seq.*]**

JURY TRIAL DEMANDED

NATURE OF THE ACTION

This is an individual action brought by Plaintiff David F. Jadwin, D.O., a whistleblowing physician with disabilities, against his employer, (i) the County of Kern (“Defendant County” or “the County”); (ii) individual Defendants Peter Bryan (“Bryan”), Chief Executive Officer of Kern Medical Center (“KMC”); Eugene Kercher, M.D., President of Medical Staff at KMC (“Kercher”); Jennifer Abraham, M.D., Immediate Past President of Medical Staff at KMC (“Abraham”); Scott Ragland, M.D., President-Elect of Medical Staff at KMC (“Ragland”); and Toni Smith, Chief Nurse Executive of KMC, (“Smith”), both personally and in their official capacities; and (iii) individual Defendants Irwin Harris, M.D., Chief Medical Officer of KMC (“Harris”); William Roy, M.D., Chief of the Division of Gynecologic Oncology at KMC (“Roy”); and DOES 1 through 10.

Plaintiff’s claims against his employer, Defendant County, allege violations of section 1278.5 of the Health & Safety Code¹ which prohibits retaliation against a health care provider who reports suspected unsafe care and conditions of patients in a health care facility; section 1102.5 of the Labor Code which prohibits retaliation against an employee for reporting or refusing to participate in suspected violations of the law; the California Family Rights Act (sections 12945.1, *et seq.*, of the Government Code) (“CFRA”) and the Family and Medical Leave Act (sections 2601, *et seq.* of the United States Code) (“FMLA”) which prohibit interference with an employee’s right to medical leave and retaliation for an employee’s exercise of the right to medical leave; and the Fair Employment and Housing Act [subdivisions (a), (m) & (n) of section 12940 of the Government Code] (“FEHA”) which prohibits discrimination against

¹ All statutory references are to California Codes unless otherwise specified.

1 an employee with a disability, failure to provide reasonable accommodation, and failure to
2 engage in an interactive process; and recovery of wrongfully deducted wages under the Fair
3 Labor Standards Act (29 U.S.C. §§ 201, et seq.) (“FLSA”).

4 Plaintiff sues Defendants County, Roy, Harris and DOES 1 through 10, for defamation;
5 and also sues each of the individual Defendants except for Roy and Harris, both in their personal
6 capacity and in their official capacity as members of the KMC Joint Conference Committee
7 (“JCC”), for violation of Plaintiff’s 14th Amendment of the United States Constitution right to
8 procedural due process pursuant to 42 U.S.C. § 1983 (“Due Process”).

9 Plaintiff brings this action for general, compensatory, and punitive damages; prejudgment
10 interest, costs and attorneys’ fees; injunctive and declaratory relief; and other appropriate and
11 just relief resulting from Defendants’ unlawful conduct, and as grounds therefor alleges:

12 **JURISDICTION AND VENUE**

13 1. This Court has federal question jurisdiction over the FMLA, Due Process, and
14 FLSA claims pursuant to 28 U.S.C. § 1331. The Court has supplemental jurisdiction over
15 Plaintiff’s transactionally-related state claims pursuant to 28 U.S.C. § 1367.

16 2. Venue is proper in Fresno in the Eastern District of California, as a substantial
17 part of the events and omissions giving rise to this claim occurred in the County of Kern,
18 California.

19 **INTRADISTRICT ASSIGNMENT**

20 3. Assignment to Bakersfield is proper pursuant to Civil Local Rule 3-120
21 (Appendix A) because the events giving rise to this civil action occurred in Bakersfield in the
22 County of Kern, California.

PARTIES

1
2 4. At all material times herein, Plaintiff David F. Jadwin, D.O. (“Plaintiff”) has
3 continuously been an employee of Defendant County, a citizen of the United States and
4 California; and a resident of Los Angeles County, California.

5 5. At all material times herein, Plaintiff was an individual with disabilities within the
6 meaning of Section 12926(i) & (k) of the Government Code.

7 6. On information and belief, at all material times herein, Defendant County is a
8 local public entity within the meaning of sections 811.2 & 900.4 of the Government Code and is
9 operating in Kern County, California.

10 7. At all material times herein, the County has continuously been an employer
11 within the meaning of FMLA [29 C.F.R. § 825.105(C)], CFRA [Government Code §
12 12945.2(b)(2)], FEHA [Government Code § 12926(d)], and FLSA [29 U.S.C. § 203], engaged in
13 interstate commerce and regularly employing more than fifty employees within seventy-five
14 miles of Plaintiff’s workplace.

15 8. On information and belief, at all material times herein, Defendant Peter Bryan is a
16 citizen of Colorado, and a resident of Denver, Colorado, and was Chief Executive Officer of
17 KMC, and a member of the JCC.

18 9. On information and belief, at all material times herein, Defendant Eugene Kercher
19 is a citizen of California, a resident of Kern County, California, and President of KMC Medical
20 Staff, and a member of the JCC.

21 10. On information and belief, at all material times herein, Defendant Irwin Harris is
22 a citizen of California, and a resident of Kern County, California, and Chief Medical Officer at
23 KMC, and a non-voting member of the JCC.

1 11. On information and belief, at all material times herein, Defendant Jennifer
2 Abraham is a citizen of California, and a resident of Kern County, California and Immediate Past
3 President of KMC Medical Staff, and a member of the JCC.

4 12. On information and belief, at all material times herein, Defendant Scott Ragland
5 is a citizen of California, and a resident of Kern County, California, President-Elect of KMC
6 Medical Staff, and a member of the JCC.

7 13. On information and belief, at all material times herein, Defendant Toni Smith is a
8 citizen of California, and a resident of Kern County, California, and Chief Nurse Executive of
9 KMC, and a member of the JCC.

10 14. On information and belief, at all material times herein, Defendant William Roy is
11 a citizen of California, and a resident of Kern County, California and Chief of the Division of
12 Gynecologic Oncology at KMC.

13 15. The true names and capacities of Defendants DOES 1 through 10, inclusive, are
14 presently unknown to Plaintiff, who therefore sues said Defendants by such fictitious names.
15 Plaintiff will amend this complaint to set forth the true names and capacities of said Defendants
16 when they are ascertained. Plaintiff is informed and believes, and upon such information and
17 belief alleges, that at all times relevant, each of the fictitiously-named Defendants was an agent,
18 employee, or co-conspirator of one or more of the named Defendants, and was acting within the
19 course and scope of said agency or employment. Plaintiff is further informed and believes, and
20 upon such information and belief alleges, that each of the fictitiously named Defendants aided,
21 assisted, approved, acknowledged and/or ratified the wrongful acts committed by Defendants as
22 alleged herein, and that Plaintiff's damages, as alleged herein, were legally caused by such
23 Defendants.

FACTUAL BACKGROUND

A. STATEMENT OF THE CASE

16. Plaintiff is a highly-qualified and capable pathologist with numerous professional accomplishments that have included leadership roles in national, state and local pathology and medical societies. Plaintiff received extensive education and training at reputable academic and medical institutions. Plaintiff has managed several clinical laboratories and pathology departments that have achieved accreditation by the College of American Pathologists, frequently "with distinction." Plaintiff has also been recognized by numerous pathologists and physicians for his professional leadership and commitment to set and uphold rigorous and ethical standards for patient care quality and safety.

17. In late 2000, Plaintiff was recruited to assume the position of Chair of the Pathology Department at KMC, a teaching hospital owned and operated by Defendant County. Plaintiff was recruited in part to raise standards of patient care quality and safety at KMC. Plaintiff immediately set about implementing, among other things, a best-practices peer review system in the Pathology Department.

18. In 2001, Plaintiff began to report concerns to key members of KMC's medical staff and administration about the unacceptably high levels of unsatisfactory or non-diagnostic fine needle aspirations ("FNA") – a method of using a needle and syringe to obtain deep internal tissue samples of vital organs – being taken by the Radiology Department at KMC for diagnosis by the Pathology Department. In 2003, Plaintiff began to report concerns to key members of KMC's medical staff and administration about ineffective and unnecessary blood transfusions and an unacceptably high incidence of lost or incomplete product chart copy certifications ("PCC") required for accurate tracking of dangerous blood transfusions. In 2004, Plaintiff began

1 to report concerns to key members of KMC's medical staff and administration about the need for
2 instituting a policy of requiring KMC Pathology Department review prior to undertaking
3 significant surgical procedures based upon the reports of outside pathologists ("Internal
4 Pathology Review"). In 2005, Plaintiff reported a concern to key members of KMC's medical
5 staff and administration about an inappropriate radical hysterectomy (cancer surgical procedure
6 for removal of all female reproductive organs and regional lymph nodes) performed by Roy on a
7 patient with a benign endometriotic cyst ("Roy Hysterectomy"). Also in 2005, Plaintiff began to
8 report concerns to key members of KMC's medical staff and administration about the need to
9 review a series of serious diagnostic errors committed by a former KMC pathologist, including
10 the failure to identify invasive adenocarcinoma in several prostate needle biopsies ("Prostate
11 Biopsy Errors"). Also in 2005, Plaintiff reported concerns to KMC administration that KMC
12 physicians had performed surgery on a wrong patient due to an error which Plaintiff believed
13 would have been less likely had KMC implemented Internal Pathology Review per Plaintiff's
14 recommendation. Plaintiff reported several other concerns about inappropriate patient care and
15 noncompliance with quality control standards. In February of 2006, Plaintiff met with Bernard
16 Barmann, County Counsel for the County of Kern ("Barmann"), to report the foregoing
17 concerns.

18 19. In 2005, Roy began a campaign of making defamatory statements impugning
19 Plaintiff's professional competence. Events culminated in October of 2005, when Kercher,
20 Harris, Ragland and Abraham harshly reprimanded Plaintiff, based on false allegations, resulting
21 from a 15- to 20-minute presentation given by Plaintiff during a monthly KMC oncology
22 conference that allegedly exceeded conference time limits by approximately ten minutes.
23 Plaintiff's presentation had attempted to highlight several of Plaintiff's above-mentioned
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1 concerns regarding Internal Pathology Review and their potential impact upon deciding the
2 correct surgical procedure for the patient under discussion. The presentation was stopped before
3 Plaintiff could present the key diagnostic conclusions of his presentation.

4 20. After the conference, Harris solicited letters of disapprobation from conference
5 participants, including Roy. Roy submitted a letter (“Roy Letter”) containing several false
6 statements of fact which defamed Plaintiff to other members of KMC’s medical staff and
7 administration. On information and belief, Harris and DOES 1 through 10 republished the Roy
8 Letter to third parties. Several KMC medical and administration officers including Bryan and
9 Kercher were aware of Roy’s, Harris’s and DOES 1 through 10’s acts of defamation, but refused
10 to intercede, and possibly approved or encouraged them.

11 21. In December of 2005, Plaintiff began medical leave initially in the form of
12 medically necessary reduced work schedule due to severe depression which was later extended
13 to June 16, 2006. It was not until on or about March 2, 2006, that Plaintiff was finally provided
14 with a Request for Leave of Absence form which he then submitted to KMC’s HR Department.
15 Plaintiff also received a document entitled “Designation of Leave (Serious Health Condition of
16 Employee-Intermittent)” from the HR Department at KMC, which included a written guarantee
17 of Plaintiff’s reinstatement to his same or equivalent position with same pay, benefits and terms
18 and conditions of employment upon his return from his leave.

19 22. During Plaintiff’s sick leave, Bryan issued a series of verbal and written
20 ultimatums to Plaintiff which threatened him with termination or demotion upon return from his
21 leave, thereby giving notice that Plaintiff was not in fact guaranteed reinstatement to his same or
22 equivalent position. In a meeting in April of 2006, Bryan ordered Plaintiff to cease his reduced
23 work schedule and begin full-time leave, despite the fact that just days before, Plaintiff had
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1 submitted a written request for extension of his reduced work schedule for an additional six
2 months to one year because of his serious medical condition. On June 14, 2006, two days before
3 Plaintiff's medical leave was allegedly due to end, Bryan informed Plaintiff that he was denying
4 Plaintiff reinstatement to his same or equivalent position, and that he was in fact demoting
5 Plaintiff to a staff pathologist position, effective June 17, 2006, because Plaintiff had taken
6 excessive sick leaves; Plaintiff's base salary was also ultimately reduced over \$100,000 (over
7 35%) as a result (such demotion and pay reduction are hereinafter referred to collectively as
8 "demotion" or "demoted").

9 23. Plaintiff resumed full-time work as a staff pathologist on October 4, 2006.
10 Plaintiff continued to suffer a hostile work environment and retaliation. On or about November
11 28, 2006, after almost six years of trying to reform KMC from within, Plaintiff finally blew the
12 whistle on KMC, formally reporting his Concerns to the Joint Commission on Accreditation of
13 Hospital Organizations, the College of American Pathologists, and the California Department of
14 Health Services ("Authorities"). On December 4, 2006, Plaintiff submitted a written complaint to
15 KMC leadership about numerous additional concerns regarding the quality of patient care and
16 the deterioration of the pathology department. On December 7, Plaintiff was placed on
17 involuntary administrative leave allegedly "pending resolution of a personnel matter".

18 24. On December 13, 2006, Plaintiff sent a letter to David Culberson ("Culberson"),
19 interim Chief Executive Officer of KMC, and carbon-copied to members of KMC's medical staff
20 leadership, informing him that he had reported his Concerns to the Authorities.

21 25. To date, Plaintiff remains on involuntary leave.

22 **B. EMPLOYMENT RELATIONSHIP**

23 26. On October 24, 2000, the County entered into an employment contract with
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1 Plaintiff (“Initial Contract”), hiring him to a full-time position as Chair of the Pathology
2 Department at KMC and as Medical Director of the KMC clinical laboratory (“Lab Director”)
3 for an employment term ending on November 30, 2006. As Lab Director, Plaintiff’s job duties
4 included Medical Director of KMC’s blood bank and transfusion service.

5 27. On or about November 12, 2002, the County modified Plaintiff’s employment
6 contract to reflect an increase in his compensation and leave accrual rate, among other things.
7 This second employment contract dated as of October 5, 2002 (“Second Contract”) extended
8 Plaintiff’s employment term to October 4, 2007. A true and correct copy of the Second Contract
9 is attached hereto as Exhibit 1, and incorporated by reference herein.

10 28. The Pathology Department and consequently the Chair of Pathology is
11 customarily referred to as “the conscience of a hospital”, and Plaintiff’s job duties extended
12 “beyond (his) own department and (he was) expected to be an effective contributor to the overall
13 improvement efforts of the hospital as a whole.” Such duties included participation in many
14 hospital committees including KMC’s Quality Management Committee.

15 29. According to Exhibit A of the Initial Contract, the County expected Plaintiff to
16 spend 80 to 90% of his time on clinical duties of a pathologist, and 10 to 20% of his time on
17 administrative duties as Chair of the Department of Pathology (“Chair of Pathology”) and Lab
18 Director.

19 30. Article V.10 of the Second Contract provides that Plaintiff will not be deemed a
20 classified employee, or have any rights or protections under the County’s Civil Service
21 Ordinance, rules or regulation.

22 31. Article II.3(B)(1) of the Second Contract guarantees that Plaintiff’s base salary
23 will be based on a benchmark salary in proportion to his full-effort commitment. In turn, the
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1 benchmark salary will be based on a national standard with four steps (A-D) with three criteria
2 for step placement: clinical experience, teaching and administrative duties as set forth in the
3 KMC Administrative Policies and Procedures Manual (“KAPP Manual”).

4 32. On information and belief, at the time of his hire, the County placed Plaintiff’s
5 salary level at Step C .

6 33. Article III.4 of the Second Contract entitles Plaintiff to the same right to unpaid
7 leave of absence as those provided to a regular County employee under the County’s policy,
8 including six months cumulative unpaid leave of absence for illness or disability pursuant to
9 Rule 1201.20 of the Rules of the Civil Service Commission for the County of Kern (“CSC
10 Rules”).

11 34. Article IV.1(B) of the Second Contract requires “cause” for termination of
12 Plaintiff’s employment, which cause is defined as “serious administrative violation and/or
13 unsatisfactory clinical performance.”

14 35. Article IV.3 of the Second Contract entitles Plaintiff to administrative review of
15 any corrective action for unsatisfactory clinical performance pursuant to the Bylaws of the
16 Medical Staff of KMC (“Bylaws”); and for administrative review of any corrective action for
17 violation of administrative policies of the County or KMC pursuant to the KAPP Manual.

18 **C. WHISTLEBLOWING**

19 36. Throughout the course of his employment by KMC, Plaintiff has advocated for
20 appropriate patient care and compliance with the quality accreditation standards of the Joint
21 Commission for the Accreditation of Hospital Organizations, the College of American
22 Pathologists, the American Association of Blood Banks and the American College of Surgeons
23 Commission on Cancer as well as applicable state and federal regulations designed to ensure safe
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1 care and conditions of patients.

2 37. Plaintiff reported his various concerns (“Concerns”) about inappropriate and/or
3 suspected unsafe patient care and conditions and non-compliance with applicable laws and
4 regulations and accreditation standards to Bryan and key members of KMC’s medical staff,
5 including but not limited to the following: (i) beginning in 2001, Plaintiff reported the
6 unacceptably high levels of unsatisfactory or non-diagnostic FNAs being taken by the Radiology
7 Department at KMC; (ii) beginning in 2003, Plaintiff reported the unacceptably high incidence
8 of lost or incomplete PCC; (iii) beginning in 2004, Plaintiff reported the need for Internal
9 Pathology Review; (iv) beginning in 2005, Plaintiff reported the Roy Hysterectomy; (v)
10 beginning in 2005, Plaintiff reported the need to review the Prostate Biopsy Errors; and (vi)
11 beginning in 2005, Plaintiff reported that KMC physicians had performed surgery on a wrong
12 patient due to an error which Plaintiff believed would have been less likely had KMC
13 implemented Internal Pathology Review. Unfortunately, Plaintiff’s reports not only appeared to
14 fall on deaf ears, but also generated resentment and hostility among his peers at KMC.

15 38. On or about December 12, 2005, Plaintiff’s former attorney, Michael Young
16 (“Young”), sent a letter to Barmann, requesting Barmann meet with Plaintiff to discuss his
17 Concerns.

18 39. On or about February 9, 2006, Barmann and Barnes met with Plaintiff. Plaintiff
19 reported his various Concerns, as well as the retaliation, defamation and hostile work
20 environment Plaintiff was experiencing at KMC.

21 40. Finally, on or about November 28, 2006, after almost six years of trying to reform
22 KMC from within in vain, Plaintiff formally reported his Concerns to the Authorities.

23 41. On December 13, 2006, Plaintiff sent a letter addressed to Culberson, and carbon-
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1 copied to members of KMC's medical staff leadership, informing him that "KMC leadership has
2 left me no choice but to report the above issues to the appropriate state and accrediting
3 agencies".

4 **D. DEFAMATION**

5 42. In 2005, Plaintiff had reported the need for Internal Pathology Review to key
6 members of KMC medical staff and administration. Roy refused to submit outside pathology
7 reports for Internal Pathology Review prior to surgery, preferring instead to refer all of his
8 pathology cases to an acquaintance at the University of Southern California without interference
9 from KMC's Pathology Department.

10 43. On or about April 15, 2005, Roy sent a letter which was addressed to Plaintiff and
11 carbon-copied to Dr. Leonard Perez ("Perez"), Chair of the OB-GYN Department at KMC. The
12 letter contained the following statements of fact:

13 Additionally, I cannot institute adjuvant therapy in a timely manner when it takes
14 weeks and sometimes months to get an accurate diagnosis from your
15 department.... Most importantly, delays in instituting appropriate adjuvant
16 therapy due to delays in obtaining an accurate diagnosis, or instituting
17 inappropriate therapy based on an inaccurate diagnosis can negatively affect
18 patient survival.

19 44. Roy's statements regarding delays of weeks and months were false. Perez
20 reasonably understood that the statements were about Plaintiff. Perez reasonably understood the
21 statements to mean that Plaintiff was not managing the Pathology Department in a competent
22 manner. Roy failed to use reasonable care to determine the truth or falsity of the statements. Roy
23 acted with malice in publishing the false statements. As a consequence, Plaintiff experienced a
24 significant loss of reputation and confidence among his peers at KMC.

45. On or about April 20, 2005, Plaintiff sent a letter addressed to Roy and carbon-
copied to Perez, Dr. Maureen Martin, Chair of Surgery ("Martin"), Kercher and Bryan. The letter

1 stated: "Please refrain from making statements such as it takes weeks and sometimes months to
2 get an accurate diagnosis from your department without citing specific instances. In my
3 experience, such statements are typically untrue and consequently are unethical if not supported
4 by facts." As officers of KMC, Kercher and Bryan approved, accepted, and/or failed to intercede
5 to protect Plaintiff from Roy's defamatory acts, and in so doing, ratified them.

6 46. In May of 2005, Harris informed Plaintiff that Roy had voiced concerns about the
7 Pathology Department and had submitted certain pathology reports for second-level peer review
8 and investigation. Plaintiff requested that Harris identify the pathology reports in question but
9 Harris refused. Later, Plaintiff determined that no second-level peer review ever occurred.

10 47. On or about June 30, 2005, Martin and Harris told Plaintiff that Roy was making
11 negative comments about the Pathology Department.

12 48. On or about June 30, 2005, Plaintiff sent a letter addressed to Roy and carbon-
13 copied to Perez, Martin, Harris, Kercher and Bryan. The letter stated:

14 It has come to my attention that you are making negative statements to numerous
15 key members of the medical staff regarding pathology reports issued by this
16 department. You are reported by others to claim that several of KMC pathology
17 diagnoses do not agree with outside diagnoses rendered by other outside
18 pathologists and that these discrepancies have or would have changed patient
19 management. It would appear from these actions that you are claiming that our
20 diagnoses are not correct. I do not recollect any true, substantial discrepancies
21 between diagnoses rendered by this department and outside pathology
22 departments based upon retrospective review of our cases since my arrival in
23 December 2000. It is reported that you claim to have in your possession several
24 such reports detailing incorrect diagnoses rendered by our department. It is also
my understanding that you have been asked on several occasions to produce
examples of these discrepancies, and as of yet have not produced any such reports
to individuals that have made these requests. To demonstrate and support the
accuracy of your claims, I request that you produce copies of these reports for my
review by July 15, 2005.

49. Roy's statements of fact regarding incorrect diagnoses by the Pathology
Department were false. The key members of the KMC medical staff who heard the statements

1 reasonably understood that the statements were about Plaintiff and reasonably understood the
2 statements to mean that Plaintiff was not managing the Pathology Department in a competent
3 manner. Roy failed to use reasonable care to determine the truth or falsity of the statements. Roy
4 acted with malice in publishing the false statements. As a consequence, Plaintiff experienced a
5 significant loss of reputation and confidence among his peers at KMC. As officers of KMC,
6 Harris, Kercher and Bryan approved, accepted, and/or failed to intercede against Roy's
7 defamatory acts and in so doing, ratified them.

8 50. On or about July 15, 2005, Roy sent a letter addressed to Plaintiff and carbon-
9 copied to Harris, Bryan and Perez. The letter stated:

10 I was quite surprised to receive your letter of June 5th. The "discrepancies" should
11 be well known to you as I have brought them to your attention many times, both
12 in the presence of Dr. Perez, and in a letter to you a couple of months ago, as well
13 as multiple phone conversations. The inaccuracies, delays and refusals to refer
specimens for outside review continue. The matter has been appropriately
reported to the administration for a quality assurance review, as I have had no
success in my pleadings to you directly.

14 51. Roy's statements of fact regarding the existence of "discrepancies" and the
15 bringing of them to Plaintiff's attention "many times" and "in the presence of Dr. Perez" were
16 false. Harris, Bryan and Perez reasonably understood that the statements were about Plaintiff and
17 reasonably understood the statements to mean that Plaintiff was neither managing the Pathology
18 Department in a competent manner nor being truthful about Roy's disclosures of the facts and
19 circumstances underlying his defamatory statements. Roy failed to use reasonable care to
20 determine the truth or falsity of the statements. Roy acted with malice in publishing the false
21 statements. As a consequence, Plaintiff experienced a significant loss of reputation and
22 confidence among his peers at KMC. As officers of KMC, Harris and Bryan approved, accepted,
23 and/or failed to intercede against Roy's defamatory acts and in so doing, ratified them.

1 52. Moreover, Roy's statement of fact that he had reported the matter to KMC
2 administration for quality assurance review was false. Harris, Bryan and Perez reasonably
3 understood that the statement was about Plaintiff and reasonably understood the statements to
4 mean that Plaintiff was not managing the Pathology Department in a competent manner. Roy
5 failed to use reasonable care to determine the truth or falsity of the statements. Roy acted with
6 malice in publishing the false statements. As a consequence, Plaintiff experienced a significant
7 loss of reputation and confidence among his peers at KMC. As officers of KMC, Harris and
8 Bryan approved, accepted, and/or failed to intercede against Roy's defamatory acts and in so
9 doing, ratified them.

10 53. On October 12, 2005, Plaintiff gave a presentation at the monthly KMC oncology
11 conference ("Oncology Conference") highlighting concerns regarding a patient that might need a
12 hysterectomy, and the need for Internal Pathology Review.

13 54. Plaintiff's presentation lasted approximately 15 to 20 minutes, which exceeded
14 alleged conference time limits by approximately ten minutes. Plaintiff was stopped before he
15 could present his final slides stating his patient care quality conclusions.

16 55. On information and belief, presenters at prior and subsequent Oncology
17 Conferences frequently exceeded time limits without interruption, incident, or reprimand.

18 56. Roy, Bill Taylor, Vice-Chair of Surgery, and Albert McBride, the Cancer
19 Committee Liaison, attended Plaintiff's presentation at the October 12 Oncology Conference and
20 were requested by Harris to give him letters criticizing Plaintiff's time infraction.

21 57. In response, Roy sent a letter ("Roy Letter"), dated October 13, 2005, addressed
22 to Harris. The Roy Letter stated in relevant part:

23 With respect, Dr. Jadwin is a small rural community hospital pathologist, with
24 very limited experience and no specialty training in regard to Gynecologic

1 Oncologic Pathology.... Dr. Jadwin is not a clinician, and has neither the fund of
2 knowledge nor the experience to make any recommendations regarding the
3 treatment of patients, much less criticize the care provided by those, such as
4 myself, whose training and experience were attained at some of the highest seats
5 of learning in the U.S and abroad. Additionally, as you are aware, it is not
6 infrequent that Dr. Jadwin's diagnoses are in err when reviewed by outside
7 specialists, as in this particular case. The management of the patient would have
8 been inappropriate if we accepted Dr. Jadwin's report, which as you know, was
9 different from two other pathologists in his own department (three different
10 opinions). I have no confidence in Dr. Jadwin and I am actively pursuing the
11 possibility of having all specimens from the Gynecologic Oncology service
12 evaluated outside, as is currently done for the Neurosurgery service.... I have
13 discussed these issues with Dr. Perez, Chairman of the Department of Obstetrics
14 and Gynecology, and he assures me of his full support.

15 58. The Roy Letter contained the following false statements of fact: (i) Plaintiff is a
16 small rural community hospital pathologist, (ii) Plaintiff has very limited experience in
17 Gynecologic Oncologic Pathology, (iii) Plaintiff is not a clinician, (iv) Plaintiff has neither the
18 fund of knowledge nor the experience to make any recommendations regarding the treatment of
19 patients, much less criticize the care given by doctors such as Roy, (v) it is not infrequent that
20 Plaintiff's diagnoses are in err when reviewed by outside specialists, as in this particular case,
21 (vi) the management of the patient would have been inappropriate if Plaintiff's report had been
22 accepted, and (vii) Plaintiff's report was different from two other pathologists in his own
23 department, suggesting the deficiency of his report. Harris reasonably understood that the
24 statements were about Plaintiff and reasonably understood the statements to mean that Plaintiff's
credentials and abilities as a pathologist and physician were deficient. Roy failed to use
reasonable care to determine the truth or falsity of the statements. Roy acted with malice in
publishing the false statements. The Roy Letter exceeded the scope of Harris's request. Roy
defamed Plaintiff despite Plaintiff's numerous prior requests to stop defaming him. As a
consequence, Plaintiff experienced a significant loss of reputation and confidence among his
peers at KMC. As an officer of KMC, Harris approved, accepted, and/or failed to intercede

1 against Roy's defamatory acts and in so doing, ratified them.

2 59. Plaintiff is informed and believes, and thereupon alleges, that Harris subsequently
3 republished the Roy Letter to DOES 1 through 10, and that DOES 1 through 10 further
4 republished the Roy Letter to other members of KMC staff. Such other members of KMC staff
5 reasonably understood that the statements contained in the Roy Letter were about Plaintiff and
6 reasonably understood such statements to mean that Plaintiff's credentials and abilities as a
7 pathologist and physician were deficient. Harris and DOES 1 through 10 failed to use reasonable
8 care to determine the truth or falsity of the statements. Harris and DOES 1 through 10 acted with
9 actual malice in publishing the false statements. As a consequence, Plaintiff experienced a
10 significant loss of reputation and confidence among his peers at KMC. As officers of KMC,
11 Harris, and DOES 1 through 10 accepted, and/or failed to intercede against Roy's defamatory
12 acts or their subsequent republication, and in so doing, ratified them.

13 60. On or about October 17, 2005, Plaintiff was ordered to attend a meeting with
14 Kercher, Harris and Ragland who subjected Plaintiff to humiliating ridicule, yelling and
15 inappropriate questioning regarding Plaintiff's alleged violation of Oncology Conference time
16 limits. Kercher, Harris and Ragland informed Plaintiff that they had received letters of
17 disapprobation ("Disapprobation Letters") from three conference participants – one of which was
18 the Roy Letter – and would be issuing a letter of reprimand later that day which would be entered
19 into Plaintiff's medical staff file. When Plaintiff asked to see the Disapprobation Letters,
20 Kercher, Harris and Ragland refused to provide them. As officers of KMC, Harris, Kercher,
21 Ragland and Abraham approved, accepted, and/or failed to intercede against Roy's defamatory
22 acts or their subsequent republication by Harris and DOES 1 through 10, and in so doing, ratified
23 such defamatory acts.

1 61. Later that day, Harris, Kercher, Ragland and Abraham issued a formal letter of
2 reprimand addressed to Plaintiff (“Reprimand Letter”). The Reprimand Letter stated: “Your
3 repeated misconduct at the Tumor Conference on October 12, 2005 was noted by numerous
4 attendants, three of which have written letters of their dissatisfaction, which will be entered into
5 your medical staff file.” The three letters to be entered into Plaintiff’s medical staff file included
6 the Roy Letter. As officers of KMC, Harris, Kercher, Ragland and Abraham approved, accepted,
7 and/or failed to intercede against Roy’s defamatory acts or their subsequent republication by
8 Harris and DOES 1 through 10, and in so doing, ratified such defamatory acts.

9 62. During the period from on or about October 17, 2005 to on or about January
10 2007, Plaintiff submitted numerous requests to Harris, Ms. Karen Barnes, Deputy County
11 Counsel for the County of Kern (“Barnes”), and Bryan to see the Disapprobation Letters. He was
12 continuously refused. As officers of KMC, Harris and Bryan approved, accepted, and/or failed to
13 intercede against Roy’s defamatory acts or their subsequent republication by Harris and DOES 1
14 through 10, and in so doing, ratified such defamatory acts.

15 63. On or about December 12, 2005, Young sent a letter to Barmann stating:

16 Recently, Dr. Jadwin was advised that several of the staff physicians had written
17 letters of dissatisfaction regarding Dr. Jadwin’s professionalism and was advised
18 that these letters were placed into his personnel/medical staff file. When the
19 doctor asked to see these letters, he was refused access to them and was
20 subsequently told that the letters had not been placed into his file. Dr. Jadwin then
21 sent an e-mail to Deputy County Counsel, Karen Barnes, copy attached, regarding
22 an opinion with respect to his right to inspect the file. At this juncture, there has
23 been no reply to his request. Needless to say, Dr. Jadwin is extremely upset and
24 emotionally distraught over the present state of affairs.

21 64. On or about January 6, 2006, Barnes sent a letter on behalf of Barmann and
22 addressed to Young. The letter included as an attachment a copy of the Roy Letter, redacted to
23 conceal Roy’s identity. This letter afforded Plaintiff his first opportunity to see the Roy Letter
24

1 and the defamatory statements contained therein.

2 65. On or about January 9, 2006, Plaintiff sent a letter addressed to Bryan, stating:

3 I have been victim of professional mistreatment by a few members of medical
4 staff. You are aware of these instances. I believe this harassment is in response to
5 the many quality management issues that I have raised. This harassment has led
6 me develop depression, anxiety and insomnia. Most recent issue involving the
7 October Oncology Conference is still unresolved. I request administrative leave
8 with pay until this issue is resolved.

9 66. On or about February 10, 2006, Plaintiff sent a letter addressed to Roy,
10 challenging the truthfulness of the claims contained in Roy's letter of July 15, 2005, that Roy had
11 reported certain patient cases handled by the Pathology Department to the KMC administration
12 for quality assurance review. Plaintiff stated "to my knowledge no credible report has been
13 submitted. As of today, I have not received notice of any deficient reports from you." Plaintiff
14 further challenged the truthfulness of other defamatory statements contained in the Roy Letter
15 and demanded "immediate proof of these allegations within 14 days". Plaintiff went on to state
16 that if Roy failed to produce such proof, then Roy should issue an apology meeting Plaintiff's
17 specifications.

18 67. On or about February 21, 2006, Bryan sent a letter addressed to Plaintiff, stating
19 in relevant part:

20 I received a copy of your letter to Dr. Roy dated February 10, 2006 and I must say
21 that I am disappointed in your decision to send it... I know that you felt justified
22 in sending the letter. You feel that Dr. Roy besmirched your reputation and
23 challenged your professional competency. Furthermore, you feel that there is no
24 evidence to support his characterizations of you and you are demanding that he
recant his comments and apologize. All of these things may or may not be as you
say. However, your decision to confront the issues this way is not a good one.... It
is not your message that people react to but rather how you deliver it.... Dr. Roy's
letter was correspondence submitted through the medical staff structure, and the
staff officers and Chief Medical Officer have the obligation to decide what to do
with that input. They can either ignore that correspondence because of a lack of
supporting evidence, call for a review of the quality of your work, or cause a
meeting to happen between you and Dr. Roy and Dr. Perez to further clarify the

1 basis of Dr. Roy's concerns.

2 68. As an officer of KMC, Bryan approved, accepted, and/or failed to intercede
3 against Roy's defamatory acts or their subsequent republication by Harris and DOES 1 through
4 10, and in so doing, ratified them.

5 69. On or about March 16, 2006, Plaintiff sent an email addressed to Kercher and
6 carbon-copied to Bryan, stating:

7 I am further requesting an investigation of Dr. Roy's professional behavior by the
8 medical staff... [H]e has made outrageous false statements about the pathology
9 department and myself, which cause great concern about his ethical integrity.... I
10 think it is outrageous that the medical staff sits by and lets this individual act in
such a pompous, destructive manner. I feel a personal duty to the pathology
department (and the hospital) to push the issue of his bad conduct in whatever
venue may be needed to control the actions of this individual.

11 70. On or about March 30, 2006, Young sent a letter addressed to Roy, stating:

12 Dr. Jadwin is very upset with the alleged statements attributable to you regarding
13 his reputation in the medical community. Unless you come forward with facts in
14 support of your position to show the truth thereof or issue a written apology to Dr.
15 Jadwin, he will have no alternative but to seek recourse against you for damaging
16 his reputation. While professionals may justifiably have a difference of opinion
regarding complex issues in the field of medicine, there is really no place for
publishing statements about a colleague that are not true and intended to tarnish
one's reputation."

17 71. To date, Plaintiff is informed and believes and thereupon alleges: (i) Roy has
18 never responded to Plaintiff's repeated requests for factual substantiation of Roy's numerous
19 defamatory statements; (ii) KMC never conducted an investigation into Roy's professional
20 misconduct; and (iii) Harris, Kercher, Bryan and Abraham have approved, accepted, and refused
21 to intercede against Roy's defamatory acts or their subsequent republication by Harris and DOES
22 1 through 10.

23 **E. MEDICAL LEAVE**

24 72. As of December 16, 2005, Plaintiff was eligible for twelve weeks of medical

1 leave under FMLA and CFRA pursuant to 29 C.F.R. § 825.110 and 2 C.C.R. § 72970(e),
2 respectively, in that he had been regularly employed by Defendant County for 1,250 hours in the
3 twelve months immediately prior to the start of his leave and had not taken any medical or
4 family leave during that time.

5 73. An eligible employee's rights under CFRA and FMLA include a "reduced work
6 schedule" pursuant to 29 C.F.R. § 825.203 that is "medically necessary" pursuant to 29 C.F.R.
7 825.117.

8 74. On or about December 16, 2005, Plaintiff submitted to KMC a copy of his
9 psychiatrist's certification stating that Plaintiff needed a reduced work schedule leave until at
10 least March 16, 2006 because of his serious medical condition.

11 75. Plaintiff's notice to KMC of his need for medical leave was reasonable under the
12 circumstances.

13 76. On or about December 16, 2005 Plaintiff began his medically necessary reduced
14 work schedule that permitted him to perform all of his duties as Chair of Pathology, and reduced
15 his schedule only as to his duties as a regular pathologist.

16 77. On or about March 2, 2006, Plaintiff was finally provided with a Request for
17 Leave of Absence form which he then submitted to KMC's HR Department. KMC's HR
18 Department formally approved the leave on March 13, 2006.

19 78. Also on or about March 2, 2006, Plaintiff received a document entitled
20 "Designation of Leave (Serious Health Condition of Employee-Intermittent)" ("Leave
21 Designation Notice") from the HR Department at KMC that informed Plaintiff:

22 You also have the right to be reinstated to the same or an equivalent job with the
23 same pay, benefits and terms and conditions of employment on your return from
24 leave. Please note that the leave provisions for County employees are more
generous than those mandated by FMLA and CFRA and, accordingly, you may be

1 eligible for more than the twelve (12) weeks of unpaid leave described above.”

2 79. On or about April 10, 2006, Plaintiff sent an email to Bryan stating: “I believe
3 that we have a meeting this Thursday at 1500. I can discuss a schedule with you. I have been
4 working only to help out Phil and Savita during periods of shortage, and to keep on top of some
5 administrative work. I am always available for necessary discussions. Just have Arlene or Tracy
6 call me.”

7 80. On or about April 17, 2006, Bryan wrote a letter addressed to Plaintiff,
8 purportedly memorializing Bryan’s April 13, 2006 meeting with Plaintiff in which he
9 acknowledged, “Yes, the Department of Pathology continues to function well as it has for many
10 years, and yes, you have made many positive changes in the department.” Bryan also
11 acknowledged that Plaintiff’s whistleblowing activity had created “the dysfunctional relationship
12 you have with some key members of the staff” and asked for Plaintiff to either cease upsetting
13 staff with his whistleblowing activity or to step down as Chairman on his return from medical
14 leave.

15 81. On or about April 20, 2006, Plaintiff received notice from KMC’s HR
16 Department that his “Intermittent Leave of Absence” had expired on March 15 and that in order
17 to extend his leave, he would need to submit a “Request for Leave of Absence” form to the HR
18 Department by “no later than Tuesday, April 25, 2006”.

19 82. On or about April 26, 2006, Plaintiff submitted a Request for Leave of Absence
20 form to KMC’s HR Department, along with a copy of his psychiatrist’s certification that Plaintiff
21 needed an extension of his reduced work schedule leave for six months to one year because of
22 his serious medical condition.

23 83. However, on or about April 28, 2006, Bryan met with Plaintiff, Barnes and Steve
24

1 O'Conner of the HR Department ("O'Conner") and ordered Plaintiff to convert his reduced work
2 schedule to involuntary full-time medical leave despite the fact that Plaintiff was ready, willing,
3 and able to continue working his reduced work schedule ("Forced FT Leave"). Bryan further told
4 Plaintiff that he needed to know by June 16, 2006 whether Plaintiff would resign as Chair; and
5 that if he resigned he would be in the same position as Adam Lang, a former staff pathologist at
6 KMC, who retained only hospital privileges but whose employment contract had been
7 terminated. Hence, Bryan threatened Plaintiff not only with removal from chairmanship, but
8 termination of the Second Contract, thereby giving notice that he would not honor any guarantee
9 of reinstatement to Plaintiff's same or equivalent position.

10 84. On or about April 28, 2006, Bryan wrote a letter to Plaintiff purportedly
11 memorializing the April 26, 2006 meeting and stating that he required Plaintiff to go on full-time
12 leave from May 1, 2006 to June 16, 2006 when Plaintiff's right to medical leave would
13 purportedly expire; and required Plaintiff to either return to work full-time on June 17, 2006 or
14 resign, purportedly because "the hospital needs you here full-time."

15 85. On or about May 5, 2006, Plaintiff underwent nasal surgery followed by a
16 difficult recovery which limited his ability to breathe and exert himself for approximately one
17 month.

18 86. On or about May 29, 2006, Plaintiff fractured his foot and avulsed a ligament
19 from his ankle in an accident which limited his ability to walk, stand or sit without elevating his
20 ankle for approximately three months.

21 87. On or about June 2, 2006, Plaintiff sent a letter addressed to Bryan, stating:

22 Unfortunately, I underwent sinus surgery in early May which took some time to
23 recover from. Then last Monday, I suffered a serious fall down a staircase that
24 will require a cast on my left ankle and impose serious restrictions on my mobility
for at least four weeks. I would greatly appreciate an extension of the June 16

1 deadline as my physical ailments of late simply have not permitted me to consider
2 and render such an important decision nor do they physically permit me to come
to the office by June 16.

3 88. On or about June 14, 2006, Bryan sent an email addressed to Plaintiff informing
4 Plaintiff that Bryan was unilaterally removing Plaintiff from his position as Chair of Pathology,
5 thereby denying Plaintiff reinstatement to his same or equivalent position despite written
6 guarantees to the contrary. The email stated:

7 My response to your request for an extension of medical leave has a two part
8 answer. First, I will extend leave to a Personal Necessity Leave for your
9 employment status only. This means that you have 90 days of extended leave
10 which will protect your overall employment status. At the end of this 90 day
11 period, you must either return to duty or resign from employment. Second, I will
12 not extend your leave as it relates to your appointment as Chairman, Department
13 of Pathology. I am implementing the provisions of paragraph 9.6-4, REMOVAL,
14 Medical Staff Bylaws, and withdrawing your appointment as Chairman,
15 Department of Pathology. This institution needs to have full-time leadership in the
16 department and because of your leave you have not been able to provide it.
Should you return to work after the completion of your Personal Necessity Leave
then your employment contract will be modified as mutually agreed to reflect that
you are still an employed pathologist (should you choose this option), but you will
not retain the duties and appointment of a chairman. My decision to do this, Dr.
Jadwin, is based solely on your inability to provide consistent and stable
leadership in the department for most of the past eight to nine months. You have
used all of your sick and vacation time in addition to using all available time
under the medical leave provisions of County policy. It is unfortunate that you
had your accident which delayed your return but the hospital needs to move on.

17 89. Later, on or about June 14, 2006, Bryan sent a letter addressed to Plaintiff
18 reiterating that Bryan was rescinding Plaintiff's Chairmanship of the Pathology Department
19 because Plaintiff had "essentially been out on either full or part-time leave for the past eight or
20 nine months" – an inaccurate statement – and because "the Department of Pathology needs a
21 full-time chairman."

22 90. On information and belief, on or about July 10, 2006, the JCC approved
23 Plaintiff's removal from Chairmanship by a majority vote.
24

1 91. Plaintiff's demotion breached the guarantee of reinstatement contained in the
2 Leave Designation Notice.

3 92. On or about September 18, 2006, Barnes sent Plaintiff's attorney a proposed
4 amendment ("Amendment") to the Second Contract which included a base salary reduction of
5 over 35% ("Payout"), allegedly as a consequence of Plaintiff's removal from Chairmanship.

6 93. On or about September 18, 2006, Plaintiff sent an email addressed to Barnes
7 protesting the Payout. The email stated:

8 Mr. Bryan stated in his letter to me that his decision to strip me of my
9 chairmanship was based on the sick leaves I was taking. KMC's proposed
10 reduction of my base salary seems to have the purpose of punishing me further. I
11 wish to return to work at KMC, but I believe the proposed drastic reduction in my
12 base salary as benchmarked against Dr. Dutt's is utterly unfair on numerous
13 levels. I am left feeling that this is simply another retaliatory effort on the part of
14 KMC.

15 94. On or about September 20, 2006, Culberson sent a letter addressed to Plaintiff
16 explaining the Payout.

17 95. On or about September 22, 2006, Plaintiff executed the Amendment
18 memorializing the Payout and submitted it to Barnes.

19 96. On or about October 3, 2006, the Board of Supervisors for Defendant County
20 voted to approve the Amendment.

21 97. On October 4, 2006, Plaintiff's 90-day personal necessity leave ended and
22 Plaintiff returned to work at KMC as a staff pathologist. Plaintiff's former subordinate, Philip
23 Dutt, MD ("Dutt"), was chosen to replace Plaintiff as Acting Chair of Pathology.

24 98. Between on or about October 4, 2006 until on or about December 7, 2006, Dutt
yelled at, harassed, insulted and ridiculed Plaintiff, both verbally and in a series of emails.

99. On or about December 4, 2006, Plaintiff sent a letter addressed to Culberson and

1 carbon-copied to key members of KMC's medical staff and administration, protesting Dutt's
2 behavior and raising additional concerns about patient care quality, safety and legal
3 noncompliance.

4 100. On or about December 7, 2006, Culberson sent a letter addressed to Plaintiff
5 informing him that he was being placed on involuntary paid administrative leave "pending
6 resolution of a personnel matter". To date, Plaintiff remains on such involuntary leave.

7 **F. DISABILITY DISCRIMINATION**

8 101. In 2003, Plaintiff had notified KMC that he suffered from depression due to work-
9 related hostility and KMC's failure to resolve Plaintiff's compliance and patient care concerns.
10 KMC subsequently permitted Plaintiff to undertake a medically necessary reduced work
11 schedule leave as a reasonable accommodation.

12 102. By December 16, 2005, Plaintiff was suffering extreme stress from the hostile
13 work environment created by the harassment, defamation, discrimination, and retaliatory adverse
14 actions of Defendants and each of them. Plaintiff's depression subsequently became disabling in
15 that it limited his ability to enjoy life, without anxiety or insomnia..

16 103. On or about December 16, 2005, Plaintiff submitted to KMC a copy of his
17 psychiatrist's certification that Plaintiff needed a reduced work schedule leave because of his
18 serious medical condition.

19 104. On or about January 9, 2006, Plaintiff sent a letter addressed to Bryan, stating:
20 "This harassment has led me develop depression, anxiety and insomnia. Most recent issue
21 involving the October Oncology Conference is still unresolved. I request administrative leave
22 with pay until this issue is resolved."

23 105. On or about January 9, 2006, Plaintiff met with Bryan regarding his request for a
24

1 medically necessary reduced work schedule, and clarified that it was necessary because of the
2 reoccurrence of his disabling depression. Bryan orally approved Plaintiff's reduced work
3 schedule.

4 106. Defendants, and each of them, knew or should have known that Plaintiff was an
5 individual with a disability that limited his major life activities of taking pleasure in life, without
6 experiencing anxiety, insomnia or difficulty breathing and moving, and/or was perceived by
7 Defendants as having such limitations.

8 107. On or about March 2, 2006, Plaintiff sent an email to Bryan, repeating his
9 previous verbal request weeks earlier that KMC hire a locum tenens pathologist to assist with the
10 Pathology Department's workload during Plaintiff's reduced work leave.

11 108. On or about March 24, 2006, Plaintiff sent an email to Bryan, expressing his
12 disappointment that KMC had not yet hired a locum tenens pathologist to assist with the
13 Pathology Department's workload during Plaintiff's reduced work leave, as Plaintiff had
14 previously requested.

15 109. On or about April 10, 2006, Plaintiff sent an email to Bryan, stating that he had
16 not been informed that KMC had finally hired a locum tenens pathologist. The email stated:

17 I don't know of Dr. Bhargava and didn't know that a contract with Dr. Bhargava
18 was signed. Had I known, I would have placed him on the call schedule for the
19 coming months. I felt obligated to take some of the call, even though I am off,
because there would not be enough resources for the call schedule.

20 110. On or about April 17, 2006, Bryan wrote a letter addressed to Plaintiff in which
21 he acknowledged that "Yes, the Department of Pathology *continues to function well* as it has for
22 many years, and yes, you have made many positive changes in the department [emphasis
23 added]".

24 111. On or about April 26, 2006, Plaintiff submitted a Request for Leave of Absence

1 form to KMC's HR Department, along with a copy of his psychiatrist's certification that Plaintiff
2 needed an extension of his reduced work schedule leave for six months to one year because of
3 his serious medical condition.

4 112. Nevertheless, on or about April 28, 2006, Bryan met with Plaintiff, Barnes and
5 O'Conner, and ordered Plaintiff to convert his reduced work schedule to involuntary full-time
6 medical leave despite the fact that Plaintiff was ready, willing, and able to continue working his
7 reduced work schedule, thereby removing an accommodation of Plaintiff's disability and
8 refusing to engage in good faith in an interactive process with Plaintiff.

9 113. On or about May 5, 2006, Plaintiff underwent nasal surgery followed by a
10 difficult recovery, which limited his ability to breathe and exert himself for approximately one
11 month.

12 114. On or about May 29, 2006, Plaintiff fractured his foot and avulsed a ligament
13 from his ankle in an accident which limited his ability to stand, sit without elevating his ankle, or
14 walk for approximately three months.

15 115. On or about June 2, 2006, Plaintiff sent a letter addressed to Bryan, requesting an
16 extension of Plaintiff's leave, which was due to expire on June 16, 2006, because of Plaintiff's
17 nasal surgery and foot injury.

18 116. On or about June 14, 2006, Bryan sent an email addressed to Plaintiff informing
19 Plaintiff that Bryan was unilaterally removing Plaintiff from his position as Chair of Pathology
20 purportedly because "[t]his institution needs to have full-time leadership in the department and
21 because of your leave you have not been able to provide it."

22 117. Later, on or about June 14, 2006, Bryan sent a letter address to Plaintiff
23 containing statements similar to those contained in Bryan's email of earlier that day, and
24

1 reiterating that “the Department of Pathology needs a full-time chairman.”

2 118. At all times material here, excluding a portion of the time when he was out on
3 voluntary full-time medical leave, Plaintiff has been able to perform the essential functions of the
4 employment positions he held with Defendants and each of them, with reasonable
5 accommodation.

6 119. Plaintiff requested reasonable accommodation of his disabilities from Defendants,
7 and each of them, in the form of a reduced work schedule and/or recuperative leave.

8 120. Allowing Plaintiff to take the medical and/or recuperative leave that he requested
9 would have been a reasonable accommodation of Plaintiff’s disabilities.

10 121. Holding open Plaintiff’s position as Chair of Pathology while he was on leave
11 would have been a reasonable accommodation of Plaintiff’s disabilities.

12 122. Holding open Plaintiff’s position as Chair of Pathology while he was on leave
13 would not have been unduly burdensome for the County or KMC.

14 **G. DUE PROCESS**

15 123. Pursuant to 9.6-4 of the Bylaws, Bryan was not authorized to remove Plaintiff
16 from his position as Chair of Pathology, but could only recommend such removal to the JCC.

17 124. It is customary for the County and/or KMC to remove a Department Chair
18 pursuant to 9.6-4 of the Bylaws only for cause.

19 125. It is customary for the County and/or KMC to provide a hearing and opportunity
20 to be heard before removing a Department Chair of KMC from office, and before a demotion
21 that results in a substantial and/or excessive reduction in compensation

22 126. When necessary, it is customary for the County and/or KMC to appoint a
23 temporary replacement as “Acting” senior manager in the place and stead of a senior manager,
24

1 such as Plaintiff, when the senior manager's position is left vacant because of a leave of absence
2 or termination of employment.

3 127. Defendants, and each of them except Roy, demoted and reduced the
4 compensation of Plaintiff without cause or justification.

5 128. Defendants, and each of them except Roy, demoted and the reduced the
6 compensation of Plaintiff without providing him with the customary hearing or notice thereof.

7 **H. ADVERSE ACTIONS**

8 129. Defendants, and each of them, have taken adverse employment actions against
9 Plaintiff, willfully and intentionally creating a hostile work environment, subjecting him to acts
10 of defamation and ratification thereof, demotion and excessive reduction in pay, disparate
11 treatment, unwarranted criticism and reprimands, threats, requests for his resignation,
12 interference with and denial of his right to medical leave, refusing to engage in good faith in an
13 interactive process and denying him reasonable accommodation and procedural due process
14 because of his protected characteristics and/or activities alleged herein.

15 **I. DAMAGES AND CAUSATION**

16 130. As a result of Defendants' acts and omissions alleged herein, Plaintiff has suffered
17 pecuniary losses, such as loss of wages and benefits, and has been required to incur medical and
18 legal expenses and to hire attorneys in order (i) to enforce Plaintiff's rights, (ii) to enforce
19 provisions of the law protecting whistleblowers, employees who exercise their right to medical
20 leave under CFRA and FMLA, and employees with disabilities that need reasonable
21 accommodation, and (iii) to take such action both in his own interest and in order to enforce
22 important rights affecting the public interest.

23 131. After Plaintiff's returned from leave on October 4, 2006, Defendants and each of
24

1 them except Roy and Harris placed Plaintiff in the position of staff pathologist and excessively
2 reduced his salary by \$100,842 or over 35%.

3 132. On information and belief, Plaintiff's salary for his work as a staff pathologist for
4 KMC is less than the benchmark National Medical Group Association ("NMGA") median salary
5 for a clinical and anatomic pathologist with Plaintiff's qualifications and experience, in breach of
6 the Second Contract.

7 133. During the time that Defendants placed Plaintiff on involuntary full-time leave,
8 including the period from December 7, 2006 to date, Defendants effectively denied Plaintiff the
9 opportunity to earn Professional Fees as set forth in Article II of the Second Contract.

10 134. As a further result of Defendants' acts and omissions alleged herein, Plaintiff has
11 suffered and continues to suffer non-economic damages, such as emotional distress, anxiety,
12 humiliation, and loss of reputation.

13 135. The acts and omissions of Defendants, and each of them, alleged herein were and
14 are a substantial factor in causing Plaintiff's harm.

15 136. The acts and omissions of Defendants Bryan, Harris, and Roy alleged herein are
16 despicable, oppressive and were done in conscious disregard of the rights of individuals and
17 whistleblowers, such as Plaintiff, and of the safety of public patients, and have evidenced actual
18 or implied malicious intent toward Plaintiff, thereby entitling him to an award of punitive
19 damages against Defendants Bryan, Harris and Roy pursuant to §3294 Civil Code in an amount
20 sufficient to make an example of Defendants Bryan, Harris, and Roy and discourage others from
21 conscious disregard for the rights of individuals and whistleblowers and for the safe care and
22 condition of public patients. Plaintiff does not know the financial worth of Defendants Bryan,
23 Harris, or Roy or the amount of punitive damages sufficient to accomplish the public purposes of
24

1 §3294 Civil Code and will seek leave to amend this complaint when such facts are known or
2 proceed according to proof at trial.

3 137. Plaintiff has mitigated his damages by seeking and maintaining medical and
4 psychiatric treatment and by taking progressive steps to try to protect his reputation and restore
5 confidence in the Pathology Department at KMC.

6 **EXHAUSTION OF REMEDIES**

7 138. On July 3, 2006, Plaintiff filed a Tort Claims Act complaint with the County of
8 Kern. The complaint disclosed Plaintiff's claims of defamation against Roy, Harris and
9 Defendants DOES 1 through 10, and of retaliation against Defendant County for engaging in
10 whistleblowing activity concerning unsafe patient care and conditions at KMC and his refusal to
11 participate in activities that he reasonably believed to be unlawful against Defendant County (a
12 true and correct copy of which is attached hereto as Exhibit 2 and incorporated by reference
13 herein). The Office of the County Counsel for the County of Kern sent a letter to Plaintiff's
14 counsel, dated September 15, 2006 (a true and correct copy of which is attached hereto as
15 Exhibit 3 and incorporated by reference herein), giving notice that Plaintiff's complaint was
16 deemed rejected by operation of law and informing Plaintiff that he had six months from the date
17 of such notice to file a court action on his claims. Plaintiff continues to be employed by KMC as
18 a staff pathologist and continues to be subject to a hostile work environment and retaliation on an
19 ongoing basis. As such, Plaintiff intends to file amended Tort Claims Act complaints with the
20 County of Kern on a periodic and continuing basis.

21 139. On August 3, 2006, Plaintiff filed a complaint with the California Department of
22 Fair Employment and Housing ("DFEH"), followed by an amended complaint filed on
23 November 14, 2006. The complaint stated claims against Defendant County for discrimination
24

1 on the basis of disability, as well as failure to engage in good faith in an interactive process,
2 failure to provide reasonable accommodation, violations of Plaintiff's medical leave rights.
3 Plaintiff received a right-to-sue notice from the DFEH, true and correct copies of which are
4 attached hereto as Exhibit 4 and incorporated by reference herein.

5 140. Plaintiff filed a notice of intent to sue under Section 1102.5 of the Labor Code,
6 without seeking any penalties, with the Labor and Workforce Development Agency ("LWDA")
7 on January 5, 2007, a true and correct copy of which is attached hereto as Exhibit 5 and
8 incorporated by reference herein. Plaintiff will amend this complaint, if appropriate, in
9 accordance with Labor Code § 2699.3(a)(2)(C) to seek attorneys fees pursuant to Labor Code §
10 2699 for violation of Labor Code § 1102.5 in the event the LWDA does not investigate, pursue
11 and/or fails to issue a citation regarding this claim.

12 141. Plaintiff intends to file a complaint with the U.S. Department of Labor alleging
13 denial of Plaintiff's right to family and medical leave under federal law. No right-to-sue notice
14 has issued as Plaintiff has a free-standing private right of action under FMLA.

15 STATEMENT OF CLAIMS

16 FIRST CLAIM

17 **(Retaliation in Violation of Health & Safety Code § 1278.5)** 18 **(Against Defendants County and DOES 1 through 10)**

19 142. Plaintiff alleges this first and separate claim for Retaliation in violation of Health
20 & Safety Code § 1278.5 against Defendant County.

21 143. Plaintiff incorporates by reference herein the allegations set forth in Paragraphs 1
22 through 141, inclusive, above.

23 144. At all material times herein, Health & Safety Code § 1278.5 provided protection
24 from discrimination and retaliation for health care workers who reported suspected unsafe care

1 and conditions of patients in health care facilities.

2 145. Defendants and each of them knew of Plaintiff's whistleblowing activity
3 regarding suspected unsafe care and conditions of patients at KMC.

4 146. Defendants and each of them have violated Section 1278.5 of the Health & Safety
5 Code by engaging in a continuous and ongoing pattern and practice of discrimination and
6 retaliation against Plaintiff because he engaged in whistleblowing activity protected by Section
7 1278.5 of the Health & Safety Code.

8 147. A motivating factor for the acts and omissions of Defendants and each of them
9 described herein was Plaintiff's reports to his employer, Barmann, and Authorities regarding
10 what he reasonably believed to be unsafe patient care and conditions.

11 WHEREFORE Plaintiff prays for relief as stated in pertinent part hereinafter.

12 **SECOND CLAIM:**

13 **(Retaliation In Violation Of Lab. Code § 1102.5)**
14 **(Against Defendants County and DOES 1 through 10)**

15 148. Plaintiff alleges this second and separate claim for Retaliation in violation of
16 Labor Code § 1102.5 against Defendant County and DOES 1 through 10, inclusive

17 149. Plaintiff incorporates by reference herein the allegations contained in Paragraphs
18 1 through 141 above, inclusive.

19 150. At all material times herein, Labor Code § 1102.5 was in effect, and provides in
20 pertinent part:

21 1102.5. (a) An employer may not make, adopt, or enforce any rule, regulation, or
22 policy preventing an employee from disclosing information to a government or
23 law enforcement agency, where the employee has reasonable cause to believe that
24 the information discloses a violation of state or federal statute, or a violation or
noncompliance with a state or federal rule or regulation.

(b) An employer may not retaliate against an employee for disclosing
information to a government or law enforcement agency, where the employee has

1 reasonable cause to believe that the information discloses a violation of state or
2 federal statute, or a violation or noncompliance with a state or federal rule or
regulation.

3 (c) An employer may not retaliate against an employee for refusing to
4 participate in an activity that would result in a violation of state or federal statute,
5 or a violation or noncompliance with a state or federal rule or regulation.

6 151. Plaintiff reported his reasonable suspicions about illegal, non-compliant, and
7 unsafe care and conditions of patients at KMC to his employer, Barmann, and Authorities.

8 152. Defendants, and each of them, knew of Plaintiff's whistleblowing reports
9 protected by Section 1102.5 of the Labor Code.

10 153. Defendants, and each of them, engaged in a continuous and ongoing pattern and
11 practice of discrimination and retaliation against Plaintiff because he engaged in activity
12 protected by Section 1102.5 of the Labor Code.

13 154. Plaintiff's activity protected by Section 1102.5 of the Labor Code was a
14 contributing factor in the continuous pattern and practice of discrimination and retaliation of
15 Defendants, and each of them, against Plaintiff described in this complaint.

16 WHEREFORE Plaintiff prays for relief as stated in pertinent part hereinafter.

17 **THIRD CLAIM**

18 **[Retaliation (CFRA - Gov't Code §§ 12945.1, *et seq.*)**
19 **(Against Defendants County and DOES 1 through 10, inclusive.)**

20 155. Plaintiff alleges this third and separate claim for violations of Government Code
21 §§ 12945.1, *et seq.*, against Defendants County and DOES 1 through 10, inclusive.

22 156. Plaintiff incorporates by reference herein the allegations contained in Paragraphs
23 1 through 141 above, inclusive.

24 157. At all material times herein, Section 12945.2(a)(1) of the Government Code and 2
C.C.R. § 7297.7(a) prohibit any person from discriminating, discharging, or retaliating against an

1 employee for exercising his right to medical leave.

2 158. Pursuant to 2 C.C.R. § 7297.2(a), CFRA requires that upon granting of leave, an
3 employer shall guarantee to reinstate an employee to the same or comparable position, and must
4 do so unless refusal to reinstate is “justified” by the defenses stated in 2 C.C.R. § 72972(c).

5 159. At all material times herein, the County lacked “justification” pursuant to 2
6 C.C.R. § 7297.7(c) for refusing to reinstate Plaintiff to the same or comparable position on his
7 return from medical leave.

8 160. Defendants, and each of them, retaliated against Plaintiff for exercising his right
9 to medical leave, including denying him a medically necessary reduced work schedule;
10 unjustified notice of Defendants’ intent not to reinstate Plaintiff to his former or comparable
11 position on his return from leave; Defendant’s unjustified refusal to reinstate Plaintiff to his
12 former or comparable position on his return from leave; demoting him; and excessively reducing
13 his salary and chance to earn professional fees, bonuses and promotion.

14 161. Plaintiff’s exercise of his right to medical leave was a motivating reason for
15 Defendants’ adverse treatment Plaintiff.

16 WHEREFORE Plaintiff prays for relief as stated in pertinent part hereinafter.

17 **FOURTH CLAIM**

18 **[Interference With FMLA Rights in violation of 29 U.S.C. §§ 2601, *et seq.*]**
19 **(Against Defendants County, Bryan, and DOES 1 through 10, inclusive.)**

20 162. Plaintiff alleges this fourth and separate claim for violations of 29 U.S.C. §§
21 2601, *et seq.* against Defendants County, Bryan, and DOES 1 through 10, inclusive, and each of
22 them.

23 163. Plaintiff incorporates by reference herein the allegations contained in Paragraphs
24 1 through 141 above, inclusive.

1 164. At all material times herein, FMLA was in effect and pursuant to 29 U.S.C. §
2 2611(4)(A)(ii)(I) imposed liability on covered employers and “any person who acts directly or
3 indirectly in the interest of the employer to any of the employees of such employer” for
4 interfering, restraining, or denying the exercise of, or attempt to exercise, any right provided
5 under FMLA pursuant to 29 U.S.C. § 2615(a).

6 165. Defendants, and each of them, interfered, restrained, or denied the exercise of, or
7 attempt to exercise, Plaintiff’s rights under FMLA.

8 166. Defendants’ interference, restraint, or denial of the exercise of, or attempt to
9 exercise Plaintiff’s rights under FMLA included interference with and denial of Plaintiff’s right
10 to a medically necessary reduced work schedule; requiring Plaintiff to take full-time medical
11 leave when he was ready, willing, and able to work part-time, exhausting his medical leave more
12 rapidly than permitted; unjustified notice of Defendants’ intent not to reinstate Plaintiff to his
13 former or comparable position on his return from leave; Defendant’s unjustified refusal to
14 reinstate Plaintiff to his former or comparable position on his return from leave; Defendants’
15 excessive reduction in Plaintiff’s salary.

16 167. Plaintiff’s exercise of his rights under FMLA was a motivating reason for
17 Defendants’ adverse treatment of Plaintiff.

18 WHEREFORE Plaintiff prays for relief as stated in pertinent part hereinafter.

19 **FIFTH CLAIM**

20 **[Violation of CFRA Rights in violation of Gov’t Code §§ 12945.1, *et seq.*]**
21 **(Against Defendants County and DOES 1 through 10, inclusive.)**

22 168. Plaintiff alleges this fifth and separate claim for violations of Government Code
23 §§ 12945.1, *et seq.*, against Defendants County and DOES 1 through 10, inclusive, and each of
24 them.

1 169. Plaintiff incorporates by reference herein the allegations contained in Paragraphs
2 1 through 141 above, inclusive.

3 170. At all material times herein, the CFRA was in effect and made it an unlawful
4 employment practice for an employer to violate an employee's rights under the CFRA pursuant
5 to section 12945.2(a) of the Government Code.

6 171. At all material times herein, the CFRA imposed strict liability on covered
7 employers who discriminated against an employee for exercising his right to leave or otherwise
8 interfered with an eligible employee's CFRA rights pursuant to 2 C.C.R. § 7297.1 and Section
9 1615(a)(2) of the United States Code.

10 172. Pursuant to 2 C.C.R. § 7297.10, CFRA expressly incorporates federal
11 implementing regulations for FMLA that are not inconsistent with CFRA. 29 C.F.R. 825 §
12 825.700(a) provides that “[i]f an employee takes paid or unpaid leave and the employer does not
13 designate the leave as FMLA leave, the leave taken does not count against an employee's FMLA
14 entitlement.”

15 173. Pursuant to 2 C.C.R. § 7297.4(6), an employer must designate leave as CFRA
16 leave within 10 days of notice of the employee's need for leave; but the greater protections of 29
17 C.F.R. § 825.208 which require an employer to do so “within two days absent extenuating
18 circumstances” should apply.

19 174. In *Bachelder v. America West Airlines*, 259 F.3d 1112 (9th Cir. 2001), the court
20 construed 29 C.F.R. Sec. 825.200(e) and held that where an employer does not designate the
21 method used in calculating employees' entitlement to leave, “the option that provides the most
22 beneficial outcome for the employee will be used.”

23 175. Pursuant to Government Code § 12945.2(a) and 2 C.C.R. § 7297.2(A), medical
24

1 leave requested is not be deemed to have been granted unless the employer provides the
2 employee, upon granting the leave request, a written guarantee of employment in the same or a
3 comparable position upon the termination of the leave.

4 176. Pursuant to 2 C.C.R. § 7297.2(a), CFRA requires that upon granting of leave, an
5 employer shall guarantee to reinstate an employee to the same or comparable position, and must
6 do so unless refusal to reinstate is “justified” by the defenses stated in 2 C.C.R. § 72972(c).

7 177. At all material times herein, the County lacked “justification” pursuant to 2
8 C.C.R.C § 7297.7(c) for refusing to reinstate Plaintiff to the same or comparable position on his
9 return from medical leave.

10 178. Defendants, and each of them, discriminated against Plaintiff and otherwise
11 interfered with his CFRA rights because he exercised, or tried to exercise, his CFRA rights,
12 including untimely designation of the initial leave as CFRA leave without providing notice of the
13 method of calculation, untimely notice of how KMC calculated Plaintiff’s entitlement to the
14 extension of his CFRA leave; interference with and denial of Plaintiff’s right to a medically
15 necessary reduced work schedule; requiring Plaintiff to take full-time medical leave when he was
16 ready, willing, and able to work part-time which exhausted his medical leave more rapidly than
17 permitted; unjustified notice of Defendants’ intent not to reinstate Plaintiff to his former or
18 comparable position on his return from leave; Defendant’s unjustified refusal to reinstate
19 Plaintiff to his former or comparable position on his return from leave; and Defendants’
20 excessive reduction in Plaintiff’s salary.

21 179. These violations may also mean that Defendant further violated Plaintiff’s CFRA
22 rights by informing him that his medical leave was exhausted as of June 16, 2005, while Plaintiff
23 may have been entitled to medical leave even as of October 4, 2006 when he returned to work.

1 180. Plaintiff's exercise of, or attempt to exercise, his CFRA rights was a motivating
2 reason for Defendants' adverse treatment of him.

3 WHEREFORE Plaintiff prays for relief as stated in pertinent part hereinafter.

4 **SIXTH CLAIM**

5 **[Disability Discrimination in Violation of Gov't Code § 12940(a)]**
6 **(Against Defendants County and DOES 1 through 10, inclusive)**

7 181. Plaintiff alleges this sixth and separate claim for Disability Discrimination in
8 violation of Government Code § 12940(a) against Defendant County and DOES 1 through 10,
9 inclusive.

10 182. Plaintiff incorporates by reference herein the allegations contained in Paragraphs
11 1 through 141 above, inclusive.

12 183. The FEHA prohibits discrimination on the basis of disability in employment.

13 184. Defendants, and each of them, through their course of conduct denied Plaintiff a
14 benefit of employment, in whole or in part, because he is an individual with known disabilities in
15 violation of Government Code 12940(a) and 2 C.C.R. §7293.7.

16 185. In addition to the adverse actions alleged above, Defendants, and each of them,
17 discriminated against Plaintiff, denied him reasonable accommodation, and refused to engage in
18 good faith in an interactive process because of his known disabilities.

19 WHEREFORE Plaintiff prays for relief as stated in pertinent part hereinafter.

20 **SEVENTH CLAIM**

21 **(Failure to Provide Reasonable Accommodation in Violation of Gov't Code § 12940(m))**
22 **(Against Defendants County and DOES 1 through 10, inclusive)**

23 186. Plaintiff alleges this seventh and separate claim for Failure to Provide Reasonable
24 Accommodation in violation of Government Code § 12940(m) against Defendant County and
DOES 1 through 10, inclusive.

1 187. Plaintiff incorporates by reference herein the allegations contained in Paragraphs
2 1 through 141 above, inclusive.

3 188. Defendants, and each of them, failed to provide reasonable accommodation of
4 Plaintiff's known disabilities in violation of Section 12904(m) of the Government Code and 2
5 C.C.R. § 7293.9.

6 WHEREFORE Plaintiff prays for relief as stated in pertinent part hereinafter.

7 **EIGHTH CLAIM**

8 **(Failure to Engage In Interactive Consultation In Violation of Gov't Code § 12940(n))**
9 **(Against Defendants County and DOES 1 through 10, inclusive)**

10 189. Plaintiff alleges this Eighth and separate claim for Failure to Engage in Good
11 Faith in an Interactive Consultation in violation of Government Code § 12940(n) against
12 Defendant County and DOES 1 through 10, inclusive.

13 190. Plaintiff incorporates by reference herein the allegations contained in Paragraphs
14 1 through 141 above, inclusive.

15 191. Defendants, and each of them, failed to engage in good faith in a prompt,
16 ongoing, interactive consultation regarding reasonable accommodation of Plaintiff's disabilities
17 in violation of Section 12940(n) of the Government Code.

18 WHEREFORE Plaintiff prays for relief as stated in pertinent part hereinafter.

19 **NINTH CLAIM**

20 **(Violation of Due Process Right under 42 U.S.C. § 1983)**
21 **(Against Defendants Bryan both personally and as former CEO of KMC; Kercher both**
22 **personally and as President of Medical Staff of KMC; Ragland both personally and as**
23 **President-Elect of Medical Staff of KMC; Abraham both personally and as Immediate Past**
24 **President of Medical Staff of KMC; and Smith both personally and as Chief Nurse**
Executive of KMC, in their capacity as members of the JCC of KMC)

192. Plaintiff alleges this Ninth and separate claim for violation of Plaintiff's

1 Fourteenth Amendment of the United States Constitution Right of Procedural Due Process under
2 42 U.S.C. § 1983 against Defendants Bryan both personally and as former CEO of KMC;
3 Kercher both personally and as President of Medical Staff of KMC; Ragland both personally and
4 as President-Elect of Medical Staff of KMC; Abraham both personally and as Immediate Past
5 President of Medical Staff of KMC; and Smith both personally and as Chief Nurse Executive of
6 KMC, in their capacity as members of the JCC of KMC.

7 193. Plaintiff incorporates by reference herein the allegations contained in Paragraphs
8 1 through 141 above, inclusive.

9 194. The Fourteenth Amendment of the United States Constitution protects a public
10 employee's right of procedural due process regarding governmental actions that deprive him of
11 life, liberty, or property interest of constitutional magnitude.

12 195. At all material times herein, Plaintiff had a property interest in his position as
13 Chair of Pathology and in the excessive reduction of his base salary of constitutional magnitude
14 as provided for in the Second Contract.

15 196. Defendants, and each of them, intentionally, or with deliberate indifference to, or
16 with a conscious disregard of, Plaintiff's Constitutional rights, denied Plaintiff his right to
17 procedural due process guaranteed by the Fourteenth Amendment of the United States
18 Constitution when they decided to demote Plaintiff and substantially and excessively reduced his
19 salary by a sum of constitutional magnitude in breach of the Second Contract.

20 197. Defendant Bryan, was acting or purporting to act under color of law in the
21 performance of his official duties as Chief Executive Officer of KMC when he unilaterally,
22 arbitrarily, and capriciously demoted Plaintiff and excessively reduced his salary by a sum of
23 constitutional magnitude in violation of the Bylaws and the Second Contract, without providing
24

1 Plaintiff with the customary notice of hearing and opportunity to be heard to which he was
2 entitled.

3 198. When Plaintiff complained to Bryan that he had been deprived of the customary
4 hearing regarding his demotion and excessive reduction in pay, the JCC met and ratified Bryan's
5 decision to demote Plaintiff and substantially and excessively reduced his salary in breach of the
6 Second Contract without providing Plaintiff with prior notice of the hearing or an opportunity to
7 be heard.

8 199. Defendants and each of them, were acting or purporting to act under color of law
9 in the performance of their official duties as members of the JCC when they arbitrarily and
10 capriciously decided to demote Plaintiff and substantially and excessively reduced his salary in
11 breach of the Second Contract without providing Plaintiff with the customary notice of hearing
12 and opportunity to be heard to which he was entitled.

13 200. Thereafter, the Kern County Board of Supervisors met and voted to confirm
14 Plaintiff's demotion and the excessive reduction in Plaintiff's salary in breach of the Second
15 Contract without providing Plaintiff with notice of the hearing or an opportunity to be heard.

16 201. The conduct of Defendants, and each of them, violated Plaintiff's 14th
17 Amendment right of procedural due process.

18 202. As a legal result of the conduct of Defendants, and each of them, Plaintiff was
19 harmed.

20 203. Defendants' denial of Plaintiff's procedural due process right was a substantial
21 factor in causing Plaintiff's harm.

22 WHEREFORE Plaintiff prays for relief as stated in pertinent part hereinafter.
23
24

1 **TENTH CLAIM**

2 **(Defamation in Violation of Civ. Code §§ 45-47)**
3 **(Against Defendants County, Roy, Harris, DOES 1 through 10, and Each of Them)**

4 204. Plaintiff alleges this Tenth and separate claim for Defamation in violation of Civil
5 Code §§ 45 to 47 against Defendants Roy, Harris, the County, and DOES 1 through 10,
6 inclusive, and each of them.

7 205. Plaintiff incorporates by reference herein the allegations contained in Paragraphs
8 1 through 141 above, inclusive.

9 206. On information and belief, Plaintiff alleges that Roy made several false statements
10 of fact, both orally and in writing, which defamed Plaintiff's professional credentials,
11 competence and/or integrity to other members of KMC's medical staff and administration, and
12 that Harris and DOES 1 through 10 republished such defamatory statements to other members of
13 KMC's medical staff and administration.

14 207. On information and belief, Plaintiff alleges Defendants, and each of them,
15 included the Roy Letter in papers stored in Plaintiff's personnel file, where they are continuously
16 republished to anyone who consults his personnel file.

17 208. The above-alleged defamatory statements have continuously been false.

18 209. The hearers of the defamatory statements reasonably understood that they were
19 about Plaintiff and understood them to mean that Plaintiff's professional credentials, competence
20 and/or integrity were deficient.

21 210. As a result of Defendants' wrongful conduct, Plaintiff has suffered harm to his
22 profession, reputation, and experienced feelings of shame, mortification, and hurt

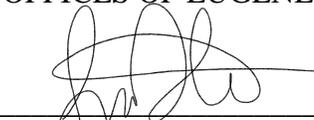
23 211. Defendants' wrongful conduct was a substantial factor in causing harm to
24 Plaintiff's profession and reputation.

- 1 3. That Defendant County be enjoined from retaliating against whistleblowers in violation
- 2 of Section 1278.5 of the Health & Safety Code and Section 1102.5 of the Labor Code.
- 3 4. That Defendant County be required to expunge from Plaintiff's personnel records any and
- 4 all references to Plaintiff's having "poor relationships" with staff, displaying poor
- 5 teamwork or other words of similar effect.
- 6 5. That Defendant County be required to comply with all of the provisions of the FEHA
- 7 relating to providing reasonable accommodation and engaging in good faith in an
- 8 interactive consultation regarding reasonable accommodation [Government Code §§
- 9 12940 (m) & (n)].
- 10 6. That Defendant County be required to provide training to the managerial staff at KMC
- 11 regarding compliance with Section 1278.5 of the Health & Safety Code, Section 1102.5
- 12 of the Labor Code, Sections 12940(m) and (n) of the Government Code, and CFRA
- 13 (Government Code §§ 12945.1, *et seq.*).
- 14 7. General and compensatory damages according to proof.
- 15 8. Liquidated damages under FMLA/CFRA and FLSA according to proof.
- 16 9. Punitive damages against Defendants Roy, Harris, and Bryan pursuant to §3294 Civil
- 17 Code;
- 18 10. Pre-judgment interest pursuant to §3291 of the Civil Code.
- 19 11. For such other and further relief as the court may deem proper.

20 Dated: January 8, 2006

LAW OFFICES OF EUGENE LEE

21
22 By: _____



Eugene D. Lee
Attorney for Plaintiff
DAVID F. JADWIN, D.O.

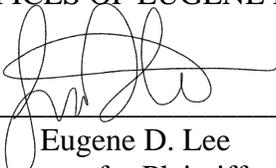
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DEMAND FOR JURY TRIAL

Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Plaintiff hereby demands trial by jury for all issues and claims triable as of right by a jury.

Dated: January 8, 2006

LAW OFFICES OF EUGENE LEE

By: 

Eugene D. Lee
Attorney for Plaintiff
DAVID F. JADWIN, D.O.