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10 Attorneys for Plaintiff,
JESSE BANAGA

11
12 **UNITED STATES DISTRICT COURT**
13 **SOUTHERN DISTRICT OF CALIFORNIA**

14 JESSE BANAGA, individually and on
15 behalf of all others similarly situated,

16 Plaintiff,

17 v.

18 GOVERNMENT EMPLOYEES
19 INSURANCE COMPANY,

20 Defendant.
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Case No. '18CV2756 BEN KSC

**CLASS ACTION COMPLAINT
FOR:**

1. INTERFERENCE, RETALIATION AND DISCRIMINATION UNDER THE FAMILY AND MEDICAL LEAVE ACT [29 U.S.C. §§ 2601, *et seq.*]; and
2. DISABILITY DISCRIMINATION IN VIOLATION OF THE AMERICANS WITH DISABILITIES ACT [42 U.S.C. §§ 12101, *et seq.*]

[JURY TRIAL DEMANDED]

INTRODUCTION

1
2 1. Plaintiff JESSE BANAGA (“Banaga” or “Plaintiff”) brings this Class
3 Action Complaint for damages, injunctive relief, and any other available legal or
4 equitable remedies, resulting from the illegal actions of Defendant
5 GOVERNMENT EMPLOYEES INSURANCE COMPANY (“Defendant”) in
6 intentionally and willfully interfering, discriminating, and retaliating against
7 Plaintiff in violation of the Family and Medical Leave Act, 29 U.S.C. §§ 2601, *et*
8 *seq.* (“FMLA”).

9 2. Plaintiff also brings this Class Action Complaint for damages,
10 injunctive relief, and any other available legal or equitable remedies, resulting from
11 Defendant discriminating against Plaintiff on account of his disability in violation
12 of the Americans with Disabilities Act, 42 U.S.C. §§ 12101, *et seq.*

13 3. Plaintiff alleges as follows upon personal knowledge as to himself and
14 his own acts and experiences, and, as to all other matters, upon information and
15 belief, including investigation conducted by his attorneys.

16 4. The FMLA was enacted to balance the demands of the workplace
17 with the needs of families, to promote the stability and economic security of
18 families, and to promote national interests in preserving family integrity. 29 U.S.C.
19 § 2601(b)(1).

20 5. The ADA prohibits employers from discriminating against qualified
21 individuals because of a disability “in regard to job application procedures, the
22 hiring, advancement, or discharge of employees, employee compensation, job
23 training, and other terms, conditions, and privileges of employment.” 42 U.S.C. §
24 12112(a).

25 6. Plaintiff brings this case as a class action seeking damages for himself
26 and all others similarly situated.

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EXHAUSTION OF ADMINISTRATIVE REMEDIES

7. On or about June 26, 2018, Plaintiff filed his charge of discrimination with the Equal Employment Opportunity Commission (“EEOC”). Thereafter, on September 10, 2018, Plaintiff received from the EEOC his “Right to Sue Letter” which is attached hereto as “EXHIBIT A.”

JURISDICTION AND VENUE

8. This Court has federal question jurisdiction pursuant to 28 U.S.C. § 1331 because this case arises out of the FMLA, 29 U.S.C. §§ 2601, *et seq.*, and the ADA, 42 U.S.C. § 12101, *et seq.*, both of which are federal statutes.

9. Venue is proper before this Court pursuant to 28 U.S.C. § 1391(b)(2) because (i) the events giving rise to Plaintiff’s claims occurred in this District; (ii) Plaintiff resides in this District; and (iii) Defendant transacts business within this District.

10. Upon information and belief, Defendant regularly and continuously conducts business within this District, and thus, personal jurisdiction is established.

PARTIES

11. Plaintiff, at all times mentioned herein, is and was a resident of the County of San Diego, in the State of California.

12. Plaintiff is informed and believes and thereon alleges that Defendant is a Maryland corporation doing business in the State of California, County of San Diego.

13. Defendant is an “employer” as defined by 29 U.S.C. § 2611(4). At all times relevant, Defendant engaged in commerce or in any industry or activity affecting commerce, and employed 50 or more employees for each working day during each of 20 or more calendar workweeks in the current or proceeding calendar year.

14. Defendant is an “employer” as defined by 42 U.S.C. § 12111(5)(a). At all times relevant, Defendant engaged in an industry affecting commerce, and

1 employed 15 or more employees for each working day in each of 20 or more
2 calendar weeks in the current or preceding calendar year.

3 **FACTUAL ALLEGATIONS**

4 15. Plaintiff re-alleges and incorporates by reference each and every
5 allegation contained in the preceding paragraphs as though fully set forth herein.

6 16. Plaintiff began his employment with Defendant on or about April 30,
7 2001 as a Customer Service Representative. In January 10, 2015, Plaintiff was
8 transferred to the Sales Department where he worked as a Sales Representative. In
9 2017, Plaintiff began experiencing acute stress and anxiety. As a result, Plaintiff
10 filed for FMLA leave in February 2017. During Plaintiff's employment, he
11 performed his job duties in a capable and competent manner.

12 17. Defendant utilized a specific calculation to determine employee pay
13 entitlement for individuals in the Sales Department, and likely other departments.
14 During Plaintiff's employment with Defendant, Defendant utilized a rating system
15 referred to as the "Power Selling Ratio" ("PSR") score. The PSR score is directly
16 impacted by an employee's attendance during the selling period.

17 18. Importantly, Defendant does not make adjustments to employees'
18 PSR scores (or any factors that go into the calculation) to factor in protected
19 leaves, such as leave pursuant to the FMLA, or any state equivalent. Therefore,
20 compensation considerations and performance standards are directly, negatively
21 impacted by protected leaves, such as those pursuant to the FMLA.

22 19. Defendant sets a "quota" at, or near, the beginning of a selling period
23 for individuals in Defendant's Sales Department, and likely other departments
24 (e.g., an employee is expected to sell 80 policies over the course of the month).
25 This quota is the same for all employees, and is not set specifically for any certain
26 employee or category of employees (therefore, employees on protected leaves are
27 measured against the same quota as those employees not on protected leaves). An
28 employee's performance is then measured against that quota. Every sale that an

1 employee makes above the set quota goes towards calculating the employee's
2 bonus for that selling period. Therefore, if an employee does not make their quota
3 for the selling period, they are not eligible for a bonus. Furthermore, Plaintiff is
4 informed and believes and thereon alleges that an employee's performance
5 compared to the quota is also utilized to make employment actions, like
6 promotions and monetary raises.

7 20. Despite the employee's performance compared to the set quota being
8 the factor to determine the amount of an employee's bonus entitlement, the
9 employee only earns the bonus if they have a high enough PSR score at the end of
10 the selling period. In other words, while the employee's sales compared to the
11 quota determine the amount of an employee's bonus, the employee's PSR score
12 determines whether or not the employee will actually be paid that monthly bonus
13 (which is part of the employee's compensation plan).

14 21. The PSR score is a factor that considers the number of policies an
15 employee sells compared to the number of policies sold by other of Defendant's
16 employees. Therefore, the person with the greatest number of policies sold during
17 a selling period will have the highest PSR score, and the person with the least
18 number of policies sold during that same selling period will have the lowest PSR
19 score.

20 22. Therefore, there is a direct correlation between the number of days
21 that an employee works and both factors that Defendant relies on to determine
22 bonus entitlement.

23 23. First, the number of days that an employee works is directly related to
24 the likelihood of selling policies above the set quota. If an employee is on
25 protected leave pursuant to the FMLA for a large portion of a month, despite it
26 being protected leave, it is highly unlikely (if not impossible) for the employee to
27 reach quota. As stated herein, although Defendant could factor in the employee's
28 protected leave to prorate the quota, it does not. Therefore, employees who are on

1 protected leave pursuant to FMLA are being negatively impacted by Defendant's
2 rigid, set quota.

3 24. Second, the number of days that an employee works is also directly
4 related to the likelihood of a high PSR score. Once again, while Defendant has the
5 ability to factor in protected leaves into the PSR score calculation, it does not.
6 Therefore, pursuant to Defendant's implementation and calculation of the PSR
7 score, employees who are on protected leaves, including leaves pursuant to the
8 FMLA, suffer negative impacts to their PSR scores.

9 25. Plaintiff believes and thereon alleges that this adverse impact to his
10 pay, both in not adjusting the quota or PSR scores based on the use of protected
11 leaves, constitutes interference with the right to take, retaliation in violation of, and
12 discrimination for the use of the FMLA.

13 26. Plaintiff further believes and thereon alleges that this adverse impact
14 to his pay, both in not adjusting the quota or PSR scores based on the use of
15 protected leaves, constitutes disability discrimination in violation of the ADA.
16 While possibly not on FMLA, employees with disabilities may be provided
17 reduced or modified work schedules to accommodate disabilities. Much like using
18 FMLA leave, these individuals with disabilities are negatively impacted by
19 Defendant's pay system due to missing work based on a disability or medical
20 condition.

21 27. In failing to take protected leaves into consideration in determining
22 compensation entitlements (e.g., bonus amounts and entitlements), and failing to
23 make adjustments to the quota and PSR score for disability related absences (e.g.,
24 reduced work schedules or absences provided as accommodations for disabilities),
25 Defendant is making the use of protected leaves and leaves due to disabilities a
26 negative factor in Plaintiff's, and other employees', employment actions (up to and
27 including demotion and termination).

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1 **CLASS ACTION ALLEGATIONS**

2 28. Plaintiff brings this action on behalf of himself and all others similarly
3 situated (the “Classes”).

4 29. Plaintiff represents, and is a member of the following Classes:

5
6 **FMLA Class**

7 All current and former employees of Defendant Government
8 Employees Insurance Company who were in a role that utilized quotas
9 and PSR scores that took leave pursuant to the Family and Medical
10 Leave Act (“FMLA”) and who were retaliated against for taking
11 FMLA leave within the three years prior to the filing of this
12 Complaint.

13 **ADA Class**

14 All qualified current and former employees of Defendant Government
15 Employees Insurance Company who suffered from a disability and
16 were provided any leaves or reduced/modified work schedules on the
17 basis of the disability, and who were in a role that utilized quotas and
18 PSR scores, who were discriminated on the basis of a disability in
19 regard to advancement, employee compensation, and other terms,
20 conditions, and privileges of employment in violation of the American
21 with Disabilities Act.

22 30. Plaintiff does not know the number of members in the Classes, but
23 believes the Class members number in the thousands, if not more. Thus, this
24 matter should be certified as a class action to assist in the expeditious litigation of
25 this matter.

26 31. Plaintiff and members of the Classes were harmed by the acts of
27 Defendant in at least the following ways: Defendant, either directly or through its
28 agents, interfered with employees’ rights to take FMLA leave, and retaliated and
discriminated against its employees for taking FMLA leave, thereby causing
Plaintiff and the Class members damages. Defendant also, either directly or

1 through its agents, discriminated against employees who suffered from disabilities
2 that required a reduced or modified work schedule, by employing illegal factors for
3 employment actions, thereby causing Plaintiff and the Class members damages.

4 32. This suit seeks only damages and injunctive relief for recovery of
5 economic injury on behalf of the Classes and it expressly is not intended to request
6 any recovery for personal injury and claims related thereto. Plaintiff reserves the
7 right to expand the Classes definition to seek recovery on behalf of additional
8 persons as warranted as facts are learned in further investigation and discovery.

9 33. **Numerosity**. The joinder of the Class members is impractical and the
10 disposition of their claims in the class action will provide substantial benefits both
11 to the parties and to the court. The Classes can be identified through Defendant's
12 employment records.

13 34. **Existence and Predominance of Common Questions of Law and**
14 **Fact**. There is a well-defined community of interest in the questions of law and
15 fact involved affecting the parties to be represented. The questions of law and fact
16 to the Classes predominate over questions which may affect individual Class
17 members, including the following:

- 18 a. Whether, within the three years prior to the filing of this Class
19 Complaint, Defendant retaliated against Plaintiff and Class Members
20 for requesting and taking FMLA leave;
- 21 b. Whether the PSR score is directly impacted by an employee's
22 attendance during the selling period;
- 23 c. Whether Defendant makes adjustments to employees' PSR scores to
24 factor in FMLA leave;
- 25 d. Whether Defendant's compensation considerations and performance
26 standards are negatively impacted by FMLA leave;
- 27 e. Whether Defendant discriminated against Plaintiff and other qualified
28 individuals on the basis of disability in regard to advancement,

1 employee compensation, and/or other terms, conditions, and
2 privileges of employment in violation of the ADA;

3 f. Whether Defendant's conduct was willful;

4 g. Whether Plaintiff and the members of the Classes were damaged
5 thereby, and the extent of damages for such violations;

6 h. Whether Defendant should be enjoined from engaging in such
7 conduct in the future; and

8 i. Whether Plaintiff and the Class members are entitled to any other
9 relief.

10 35. **Typicality.** As a person who failed to meet his quota or suffered a
11 negative impact to his PSR score for taking FMLA leave pursuant to 29 U.S.C. §
12 2615(a)(1) or based on a disability, Plaintiff is asserting claims that are typical of
13 the Classes. Plaintiff will fairly and adequately represent and protect the interests
14 of the Classes in that Plaintiff has no interests antagonistic to any member of the
15 Classes.

16 36. Plaintiff and the members of the Classes have all suffered irreparable
17 harm as a result of Defendant's unlawful and wrongful conduct. Absent a class
18 action, the Classes will continue to face the potential for irreparable harm. In
19 addition, these violations of law will be allowed to proceed without remedy and
20 Defendant will likely continue such illegal conduct. Because of the size of the
21 individual Class member's claims, few, if any, Class members could afford to seek
22 legal redress for the wrongs complained of herein.

23 37. **Adequacy of Representation.** Plaintiff will fairly and adequately
24 represent and protect the interests of other members of the Classes in that Plaintiff
25 has no interests antagonistic to any member of the Classes. Further, Plaintiff has
26 retained counsel experienced in handling class action claims and claims involving
27 violations of employment rights.

28 38. **Superiority.** A class action is a superior method for the fair and

1 efficient adjudication of this controversy. Class-wide damages are essential to
2 induce Defendant to comply with the FMLA and the ADA. The interest of Class
3 members in individually controlling the prosecution of separate claims against
4 Defendant is small because the damages in an individual action for violation of
5 FMLA and/or ADA may be minimal. Management of these claims is likely to
6 present significantly fewer difficulties than those presented in many class claims.

7 39. Defendant has acted on grounds generally applicable to the Classes,
8 thereby making appropriate final injunctive relief and corresponding declaratory
9 relief with respect to the Classes as a whole.

10 **FIRST CAUSE OF ACTION**

11 **INTERFERENCE, RETALIATION AND DISCRIMINATION UNDER THE**
12 **FAMILY AND MEDICAL LEAVE ACT**

13 **[29 U.S.C. §§ 2601, *et seq.*]**

14 40. Plaintiff re-alleges and incorporates by reference each and every
15 allegation contained in the preceding paragraphs as though fully set forth herein.

16 41. An employer is prohibited from interfering with, or retaliating or
17 discriminating against an employee for having exercised or attempted to exercise
18 any FMLA right. 29 U.S.C. §§ 2601, *et seq.*

19 42. Defendant is an “employer” covered by the FMLA, pursuant to 29
20 U.S.C. § 2611(4).

21 43. Plaintiff was entitled to leave under the FMLA, pursuant to 29 CFR
22 825.114.

23 44. Defendant engaged in prohibited conduct under the FMLA by
24 interfering, discriminating, and retaliating against Plaintiff and Class Members for
25 having exercised their FMLA rights.

26 45. As a direct, foreseeable, and proximate result of Defendant’s conduct,
27 Plaintiff and Class Members have sustained and continue to sustain substantial
28 employment benefits and employment opportunities, and Plaintiff and Class

1 Members have suffered other economic losses in an amount to be determined at
2 trial.

3 46. As a direct, foreseeable, and proximate result of Defendant’s conduct,
4 Plaintiff and Class Members have suffered and continue to suffer humiliation,
5 emotional distress, loss of reputation, and mental and physical pain and anguish, all
6 to Plaintiff and Class Members’ damages to in a sum to be established according to
7 proof.

8 47. As a result of Defendant’s deliberate, outrageous, despicable conduct,
9 Plaintiff and Class Members are entitled to recover punitive and exemplary
10 damages in an amount commensurate with Defendant’s wrongful acts and
11 sufficient to punish and deter future similar reprehensible conduct.

12 48. In addition to such other damages as may properly be recovered
13 herein, Plaintiff and Class Members are entitled to recover prevailing party
14 attorneys’ fees, expert witness fees, and costs pursuant to 29 U.S.C. § 2617(a)(3).

15 **SECOND CAUSE OF ACTION**

16 **DISABILITY DISCRIMINATION IN VIOLATION OF THE AMERICANS**

17 **WITH DISABILITIES ACT**

18 **[42 U.S.C. §§ 12101, *et seq.*]**

19 49. Plaintiff re-alleges and incorporates by reference each and every
20 allegation contained in the preceding paragraphs as though fully set forth herein.

21 50. The Americans with Disabilities Act, 42 U.S.C. § 12101, *et seq.*,
22 prohibits employers from discriminating against qualified individuals because of a
23 disability “in regard to job application procedures, the hiring, advancement, or
24 discharge of employees, employee compensation, job training, and other terms,
25 conditions, and privileges of employment.” 42 U.S.C. § 12112.

26 51. Defendant is a covered employer to which the ADA applies.

27 52. Defendant and Class Members were discriminated against solely on
28 account of a disability.

1 53. As a direct, foreseeable, and proximate result of Defendant’s conduct,
2 Plaintiff and Class Members have sustained and continue to sustain substantial
3 employment benefits and employment opportunities, and Plaintiff and Class
4 Members have suffered other economic losses in an amount to be determined at
5 trial.

6 54. As a direct, foreseeable, and proximate result of Defendant’s conduct,
7 Plaintiff and Class Members have suffered and continue to suffer humiliation,
8 emotional distress, loss of reputation, and mental and physical pain and anguish, all
9 to Plaintiff Class Members’ damages to in a sum to be established according to
10 proof.

11 55. As a result of Defendant’s deliberate, outrageous, despicable conduct,
12 Plaintiff and Class Members are entitled to recover punitive and exemplary
13 damages in an amount commensurate with Defendant’s wrongful acts and
14 sufficient to punish and deter future similar reprehensible conduct.

15 56. In addition to such other damages as may properly be recovered
16 herein, Plaintiff and Class Members are entitled to recover prevailing party
17 attorneys’ fees and costs pursuant to 42 U.S.C. § 12205.

18 **PRAYER FOR RELIEF**

19 **WHEREFORE**, Plaintiff respectfully requests the Court to grant Plaintiff and the
20 Class the following relief against Defendant:

- 21 • Certify the Class as requested herein;
- 22 • Appoint Plaintiff to serve as the Class Representative in this matter;
- 23 • Appoint Plaintiff’s Counsel as Class Counsel in this matter; and
- 24 • Any such further relief as may be just and proper.

25 In addition, Plaintiff prays for the following relief:

- 26 • For compensatory damages, including back pay, front pay, and other
27 monetary relief, in an amount according to proof;
- 28 • For special damages in an amount according to proof;

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- For mental and emotional distress damages;
- For punitive damages in an amount necessary to make an example of and to punish Defendant, and to deter future similar misconduct;
- For costs of suit, including attorneys’ fees as permitted by law, including those permitted by 29 U.S.C. § 2617(a)(3) and 42 U.S.C. § 12205;
- For an award of interest, including prejudgment interest, at the legal rate as permitted by law;
- For injunctive relief; and
- For such other and further relief as the Court deems proper and just under all the circumstances.

TRIAL BY JURY

57. Pursuant to the Seventh Amendment to the Constitution of the United States of America, Plaintiff is entitled to, and demands, a trial by jury.

Dated: December 7, 2018

KAZEROUNI LAW GROUP, APC

By: s/ABBAS KAZEROUNIAN
Abbas Kazerounian, Esq.
Attorneys for Plaintiff JESSE BANAGA
E-mail: ak@kazlg.com

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EXHIBIT A

1. Plaintiff's "Right to Sue Letter" issued by the Equal Employment Opportunity Commission on September 10, 2018.

JS 44 (Rev. 06/17)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS JESSE BANAGA (b) County of Residence of First Listed Plaintiff <u>San Diego County</u> (EXCEPT IN U.S. PLAINTIFF CASES) (c) Attorneys (Firm Name, Address, and Telephone Number) KAZEROUNI LAW GROUP, APC 245 Fisher Avenue, Unit D1, Costa Mesa, CA 92626 Telephone No.: (800) 400-6808	DEFENDANTS GOVERNMENT EMPLOYEES INSURANCE COMPANY County of Residence of First Listed Defendant <u>Montgomery County</u> (IN U.S. PLAINTIFF CASES ONLY) NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED. Attorneys (If Known) Unknown <div style="text-align: right; font-size: 1.2em;">'18CV2756 BEN KSC</div>
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II. BASIS OF JURISDICTION (Place an "X" in One Box Only)	III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)																								
<input type="checkbox"/> 1 U.S. Government Plaintiff <input type="checkbox"/> 2 U.S. Government Defendant <input checked="" type="checkbox"/> 3 Federal Question (U.S. Government Not a Party) <input type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III)	<table style="width:100%; border-collapse: collapse;"> <tr> <td style="width:33%;"></td> <td style="width:33%; text-align: center;">PTF</td> <td style="width:33%; text-align: center;">DEF</td> </tr> <tr> <td>Citizen of This State</td> <td style="text-align: center;"><input type="checkbox"/> 1</td> <td style="text-align: center;"><input type="checkbox"/> 1</td> </tr> <tr> <td>Citizen of Another State</td> <td style="text-align: center;"><input type="checkbox"/> 2</td> <td style="text-align: center;"><input type="checkbox"/> 2</td> </tr> <tr> <td>Citizen or Subject of a Foreign Country</td> <td style="text-align: center;"><input type="checkbox"/> 3</td> <td style="text-align: center;"><input type="checkbox"/> 3</td> </tr> </table> <table style="width:100%; border-collapse: collapse;"> <tr> <td style="width:33%;"></td> <td style="width:33%; text-align: center;">PTF</td> <td style="width:33%; text-align: center;">DEF</td> </tr> <tr> <td>Incorporated or Principal Place of Business In This State</td> <td style="text-align: center;"><input type="checkbox"/> 4</td> <td style="text-align: center;"><input type="checkbox"/> 4</td> </tr> <tr> <td>Incorporated and Principal Place of Business In Another State</td> <td style="text-align: center;"><input type="checkbox"/> 5</td> <td style="text-align: center;"><input type="checkbox"/> 5</td> </tr> <tr> <td>Foreign Nation</td> <td style="text-align: center;"><input type="checkbox"/> 6</td> <td style="text-align: center;"><input type="checkbox"/> 6</td> </tr> </table>		PTF	DEF	Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3		PTF	DEF	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6
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IV. NATURE OF SUIT (Place an "X" in One Box Only)				
Click here for: Nature of Suit Code Descriptions .				
CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/ Pharmaceutical <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input checked="" type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS		
<input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement		

V. ORIGIN (Place an "X" in One Box Only)

<input checked="" type="checkbox"/> 1 Original Proceeding	<input type="checkbox"/> 2 Removed from State Court	<input type="checkbox"/> 3 Remanded from Appellate Court	<input type="checkbox"/> 4 Reinstated or Reopened	<input type="checkbox"/> 5 Transferred from Another District (specify)	<input type="checkbox"/> 6 Multidistrict Litigation - Transfer	<input type="checkbox"/> 8 Multidistrict Litigation - Direct File
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VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
FMLA, 29 U.S.C. §§ 2601, et seq. and the ADA, 42 U.S.C. §§ 12101, et seq.

Brief description of cause:
Interference, retaliation, and discrimination in violation of the FMLA and ADA

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. **DEMAND \$** _____

CHECK YES only if demanded in complaint:
JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY (See instructions):

JUDGE _____ DOCKET NUMBER _____

DATE: December 7, 2018 SIGNATURE OF ATTORNEY OF RECORD: s/Abbas Kazerounian

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
- (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
 United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.
 United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
 Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
 Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: [Nature of Suit Code Descriptions](#).
- V. Origin.** Place an "X" in one of the seven boxes.
 Original Proceedings. (1) Cases which originate in the United States district courts.
 Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.
 Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
 Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
 Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
 Multidistrict Litigation – Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407.
 Multidistrict Litigation – Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket.
PLEASE NOTE THAT THERE IS NOT AN ORIGIN CODE 7. Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
 Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
 Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.

DISMISSAL AND NOTICE OF RIGHTS

To: **Jesse Banaga**
519 Casselman St Apt A
Chula Vista, CA 91910

From: **San Diego Local Office**
555 W. Beech Street
Suite 504
San Diego, CA 92101

On behalf of person(s) aggrieved whose identity is
CONFIDENTIAL (29 CFR §1601.7(a))

Telephone No.

EEOC Charge No.

EEOC Representative

(619) 557-7286

488-2018-00302

**Ian Shoff,
Investigator**

THE EEOC IS CLOSING ITS FILE ON THIS CHARGE FOR THE FOLLOWING REASON:

- The facts alleged in the charge fail to state a claim under any of the statutes enforced by the EEOC.
- Your allegations did not involve a disability as defined by the Americans With Disabilities Act.
- The Respondent employs less than the required number of employees or is not otherwise covered by the statutes.
- Your charge was not timely filed with EEOC; in other words, you waited too long after the date(s) of the alleged discrimination to file your charge.
- The EEOC issues the following determination: Based upon its investigation, the EEOC is unable to conclude that the information obtained establishes violations of the statutes. This does not certify that the respondent is in compliance with the statutes. No finding is made as to any other issues that might be construed as having been raised by this charge.
- The EEOC has adopted the findings of the state or local fair employment practices agency that investigated this charge.
- Other (briefly state)

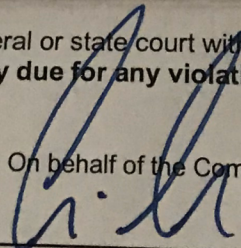
- NOTICE OF SUIT RIGHTS -

(See the additional information attached to this form.)

Title VII, the Americans with Disabilities Act, the Genetic Information Nondiscrimination Act, or the Age Discrimination in Employment Act: This will be the only notice of dismissal and of your right to sue that we will send you. You may file a lawsuit against the respondent(s) under federal law based on this charge in federal or state court. Your lawsuit **must be filed WITHIN 90 DAYS** of your receipt of this notice; or your right to sue based on this charge will be lost. (The time limit for filing suit based on a claim under state law may be different.)

Equal Pay Act (EPA): EPA suits must be filed in federal or state court within 2 years (3 years for willful violations) of the alleged EPA underpayment. This means that **backpay due for any violations that occurred more than 2 years (3 years) before you file suit may not be collectible.**

On behalf of the Commission



**Ian Shoff, Investigator
San Diego Local Office**

9/16/18
(Date Mailed)

Enclosures(s)

cc: **Cezarina Alzona**
HR Director
GEICO
5260 Western Avenue
Chevy Chase, MD 20815

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [GEICO Discriminates Against Employees on FMLA Leave, Class Action Alleges](#)
