

03/18/2025

By: N. Young Deputy

1 DAVID S. RATNER (SBN 316267)
2 SHELLEY A. MOLINEAUX (SBN 277884)
3 RATNER MOLINEAUX, LLP
4 1148 Alpine Rd., Suite 201
5 Walnut Creek, CA 94596
6 Tel: (925) 239-0899
7 david@ratnermolineaux.com
8 shelley@ratnermolineaux.com

6 Attorneys for Plaintiffs
7 BRETT MITCHELL; DAVID BROOKS;
8 ERIC GRAHAM

9 **IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA**
10 **COUNTY OF SACRAMENTO**

11 BRETT MITCHELL, DAVID BROOKS, and
12 ERIC GRAHAM,

13 Plaintiffs,

14 v.

15 THE REGENTS OF THE UNIVERSITY OF
16 CALIFORNIA, dba UC DAVIS HEALTH, a
17 California Corporation, and DOES 1 through 50,
18 inclusive.

19 Defendants.

Case No. **25CV006262**

COMPLAINT FOR DAMAGES

1. Retaliation in Violation of FEHA (Government Code §12940, et seq.);
2. Retaliation in Violation of Labor Code §1102.5;
3. Retaliation in Violation of Labor Code § 98.6;
4. Age Discrimination in Violation of FEHA (Government Code § 12940, et seq.);
5. Disability Discrimination in Violation of FEHA (Government Code §12940, et seq.);
6. Failure to Engage in Good Faith Interactive Process in Violation of FEHA (Government Code §12940, et seq.);
7. Failure to Provide Reasonable Accommodations in Violation of FEHA (Government Code §12940, et seq.);
8. Hostile Work Environment Harassment in Violation of FEHA (Government Code § 12940, et seq.);
9. Failure to Prevent Discrimination and Harassment in Violation of FEHA (Government Code § 12940, et seq.);
10. Wrongful Termination in Violation of Public Policy

DEMAND FOR JURY TRIAL

1 of them, including without limitation any Does, were acting in concert and participation with each other;
2 were joint participants and collaborators in the acts complained of; and were the agents and/or employees
3 of one another in doing the acts complained of herein, each acting within the course and scope of said
4 agency and/or employment.

5 10. UC Davis and Does 1 through 50, inclusive, are collectively referred to hereafter as
6 “Defendants”.

7 ***JURISDICTION AND VENUE***

8 11. This Court has jurisdiction over Defendant because at all times relevant, they were
9 authorized to transact, and are transacting business in California.

10 12. Venue is proper in this Court pursuant to Code of Civil Procedure § 395, because the acts,
11 events and omissions complained of herein occurred in Sacramento County, California.

12 ***EXHAUSTION OF ADMINISTRATIVE REMEDIES***

13 13. On or about March 18, 2025, Plaintiff Mitchell obtained a Right to Sue Letter from the
14 California Civil Rights Department attached hereto as Exhibit A.

15 14. On or about March 18, 2025, Plaintiff Brooks obtained a Right to Sue Letter from the
16 California Civil Rights Department attached hereto as Exhibit B.

17 15. On or about March 18, 2025, Plaintiff Graham obtained a Right to Sue Letter from the
18 California Civil Rights Department attached hereto as Exhibit C.

19 ***GENERAL ALLEGATIONS***

20 16. Plaintiff Mitchell is a seasoned employee, having worked for UC Davis for 5 years and
21 having decades of experience in his field respectively. Over the years, Defendant rewarded Plaintiff’s
22 individual accomplishments with positive performance reviews, promotions, special assignments, and
23 pay increases.

24 17. Plaintiff Brooks is a seasoned employee, having worked for UC Davis for 22 years and
25 having decades of experience in his field respectively. Over the years, Defendant rewarded Plaintiff’s
26 individual accomplishments with positive performance reviews, promotions, special assignments, and
27 pay increases.

28 18. Plaintiff Graham is a seasoned employee, having worked for UC Davis for 19 years and

1 having decades of experience in his field respectively. Over the years, Defendant rewarded Plaintiff's
2 individual accomplishments with positive performance reviews, promotions, special assignments, and
3 pay increases.

4 19. In or about July 2021 UC Davis hired Jason Nietupski as Director of Facilities.

5 20. Before UC Davis hired Mr. Nietupski none of the Plaintiffs had received a disciplinary
6 write-up, never had been given poor scores on their performance reviews and were all well regarded and
7 valued employees.

8 21. However, each of the Plaintiffs had one characteristic that Mr. Nietupski found unsuitable
9 for them to continue employment at UC Davis – they are “old”.

10 22. Plaintiff Mitchell is 60 years old, Plaintiff Brooks is 64 years old, and Plaintiff Graham is
11 58 years old.

12 23. Mr. Nietupski and the new UC Davis management team believed that the senior staff,
13 including Plaintiffs created problems at UC Davis because of their age. Accordingly, once Mr. Nietupski
14 came on board, UC Davis began targeting Plaintiffs for elimination because of their age.

15 24. Therefore, UC Davis concocted false reasons to terminate each Plaintiff's employment at
16 UC Davis resulting in Plaintiffs sustaining substantial economic damages including loss of salary,
17 benefits, and pension and severe emotional distress.

18 **A. Plaintiff Brett Mitchell**

19 25. Plaintiff Brett Mitchell (“Mitchell”) is a 60-year-old Caucasian male who began working
20 for UC Davis as a Project Manager on October 1, 2018. He received exemplary performance evaluations
21 and three promotions, ultimately becoming Director of Facilities Expansion.

22 26. UC Davis wrongfully fired Mr. Mitchell on June 6, 2022.

23 27. On December 1, 2018, UC Davis assigned Mr. Mitchell as the Project Executive for the
24 Ernest E. Tschannen Eye Institute.

25 28. On June 1, 2019, UC Davis promoted Mr. Mitchell to Interim Planning Manager with a
26 salary increase.
27

28 29. On January 1, 2020, UC Davis promoted Mr. Mitchell to Director of Facilities Expansion

1 with a salary increase. In this role, Mr. Mitchell successfully led procurements that have led to the
2 flagship development of the Folsom Medical Clinic; the new call center at 10888 White Rock road in
3 Rancho Cordova, the new Administration Facility at 10850, White Rock Road in Rancho Cordova, the
4 new Physical Therapy Clinic at Point West in Sacramento, the Medical Office Building on E. Roseville
5 Pkwy in Roseville and a strategic land acquisition of 50 acres to expand medical services to the Existing
6 UC Davis Medical Group in Rocklin on W. Ranch View Drive.

8 30. On November 1, 2020, Mr. Mitchell received a merit bonus based on his job performance.

9 31. On or around July of 2021, UC Davis hired Jason Nietupski (“Nietupski”) as the
10 Executive Director of Facilities, Planning and Development. Mr. Nietupski became Mr. Mitchell’s boss.

11 32. On August 31, 2021, Mr. Mitchell received a stipend intended for “information flow” and
12 was made responsible to process information related to Aggie Square (“AS”). Mr. Mitchell’s sole
13 responsibility in this role was the transference of information with respect to AS, which was a campus
14 initiative, to UC Davis Health employees, for their information and action thereto. This position held no
15 responsibility, nor ability to act on action items required to complete needed work. Only to advise staff,
16 under Mr. Nietupski employ, to commit resources to act in performance of the AS initiative.

18 33. On or around early September of 2021, Mr. Mitchell informed Mr. Nietupski that he must
19 take a leave of absence under the Family Medical Leave Act (“FMLA”) to care for his parents, who were
20 both suffering from terminal cancer. Mr. Mitchell’s parents have since died.

21 34. On September 1, 2021, Mr. Mitchell informed Mr. Nietupski that UC Davis needed to
22 move fleet services to allow for the planned expansion of AS. Mr. Nietupski, along with his employees,
23 now became solely responsible for AS, even though it was one of his grounds for termination. Mr.
24 Nietupski himself failed to take action on the AS initiative, and then in a calculated manner, placed the
25 blame for inactivity on Mr. Mitchell when it became an issue for the Chancellor, Gary May (“May”), as
26 an act of discrimination.

28 35. On November 1, 2021, Mr. Mitchell received a merit bonus, which was based on his job

1 performance.

2 36. Mr. Mitchell took Medical Leave, using his own accumulated sick time, in September and
3 December of 2021, to provide care for his ailing parents.

4 37. Mr. Mitchell was also hospitalized himself for a week in December of 2021.

5 38. The following discrimination occurred when UC Davis discriminated against Mr. Mitchell
6 on the basis of his age and the need to exercise Medical Leave to care for himself and his family.
7

8 39. On or around October 1, 2021, during a Teams call, Mr. Nietupski threatened Mr.
9 Mitchell saying, "I will shame you, and then I will fire you, [if you can't do your job]". This threat was
10 witnessed by several other individuals on the call.

11 40. This same threat was delivered again personally to Mr. Mitchell in his office, while again
12 being witnessed by others in that office approximately two weeks later. Mr. Mitchell speculated that this
13 threat was an attempt to intimidate Mr. Mitchell as part of his discriminatory practice. Along with this
14 repeated threat, "Mr. Nietupski stated, "I don't care, I have been sued before".
15

16 41. On or around December 1, 2021, Mr. Nietupski was witnessed saying, "I have given Brett
17 [Mitchell] three things to do, and, to my surprise, he has gotten them done," to a fellow employee. This
18 shows a biased contempt for Mr. Mitchell's ability, based solely on Mr. Nietupski's contempt for his age.
19

20 42. Chris Burun ("Burun") was hired as the Associate Executive Director and stayed with UC
21 Davis for a total of six weeks before quitting. Mr. Burun contacted Mr. Mitchell after departing
22 suggesting to him that he had grounds to seek legal help for his treatment at UC Davis and at the hands of
23 Mr. Nietupski.

24 43. On or around December 1, 2021, Mr. Nietupski passed over Mr. Mitchell for the position
25 of Interim Associate Executive Director in favor of Craig Allen ("Allen"), who is significantly younger
26 and less credentialed for the position than Mr. Mitchell. This, despite the human resources department's
27 regular warning to Mr. Nietupski that he does not make interim replacements without the proper
28

1 offerings to other eligible employees. And, despite Mr. Nietupski own efficiency consultant, Dr. Thomas
2 Kurmel, suggestion that Mr. Mitchell be staffed in an executive role.

3 44. On information and belief, the position of Interim Associate Executive Director was not
4 advertised for competition, as is required for UC Davis.

5 45. On or around January 1, 2022, Mr. Nietupski followed through with his threatening
6 behavior when he evicted Mr. Mitchell from the corner office he had occupied after having been
7 promoted three times prior to Mr. Nietupski's tenure by placing Mr. Mitchell in a cubicle in an effort to
8 humiliate and force Mr. Mitchell to resign.

9 46. Mr. Allen was then placed in Mr. Mitchell's corner office, which he was removed from.

10 47. In addition, Mr. Nietupski began excluding Mr. Mitchell from meetings.

11 48. Mr. Nietupski also took away the successful Folsom Project, with no notice, from Mr.
12 Mitchell. Mr. Mitchell learned this through a coworker instead of his manager.

13 49. Mr. Mitchell was never placed on a performance improvement plan or "PIP", he was not
14 given any notice of performance issues, nor given any opportunity to improve his alleged poor
15 performance.

16 50. In fact, Mr. Mitchell had regular meetings and great reviews prior to his wrongful
17 termination. In fact, then Chief Financial Officer (CFO), Tim Maurice ("Maurice"), who was also Mr.
18 Nietupski's Manager, on or about January 1, 2022, informed Mr. Mitchell that "he was doing a great
19 job".

20 51. Instead, Mr. Nietupski immediately began to remove responsibilities from Mr. Mitchell.

21 52. Mr. Nietupski secretly removed Mr. Mitchell from the organization chart. In addition, Mr.
22 Nietupski took away Mr. Mitchell's stipend and falsely accused him of taking kickbacks from a vendor
23 on or around February 1, 2022. Mr. Nietupski denied Mr. Mitchell an equity raise and finally falsely
24 blamed Mr. Mitchell for his failure to manage a critical project as a pretext to terminate Mr. Mitchell.
25
26
27
28

1 53. In March of 2022, Mr. Mitchell was provided a “Notice of Intent to terminate” at a
2 meeting with Mr. Nietupski, Mr. Burun, Mr. Mitchell and a representative from Human Resources. In
3 that meeting, Mr. Nietupski handed Mr. Mitchell a packet and notified him that this was his “Notice of
4 Termination”. The Human Resources representative corrected Mr. Nietupski and added that it was a
5 “Notice of Intent to Terminate”. Thus showing Mr. Nietupski’s intent, without cause or opportunity to
6 hear the facts. After a prolonged Skelly process, in which UC Davis took an excessive amount of time
7 for review, Mr. Mitchell received a “Notice of Termination” via special delivery on March 6, 2022.

9 54. On information and belief, Mr. Nietupski targeted employees who were older in age.

10 55. Mr. Mitchell was close to his five-year mark with UC Davis which would have given him
11 retirement benefits based on the UC Retirement calculator, which brings a substantial boost. Being
12 terminated would also cost Mr. Mitchell his Title IV Income Driven Student Loan Payment
13 determination.

15 56. A Skelly process began immediately upon a “Notice of Intent to Terminate”. A hearing
16 for Mr. Mitchell was conducted in April of 2022.

17 57. However, Mr. Mitchell was wrongfully terminated on June 6, 2022. The reason Mr.
18 Mitchell was terminated was explained as he had “mismanaged consultants”. However, Mr. Mitchell
19 argued in his Skelly hearing that the first consultant was not currently under contract, the second
20 consultant was managed well, and the third consultant’s contract started in January of 2022, and Mr.
21 Mitchell was released in March of 2022, resulting in hardly any time to work on this contract.

23 58. In a later meeting between Mr. Mitchell and Mr. Burun, Mr. Mitchell learned that Mr.
24 Burun was given the task of terminating Mr. Mitchell, and he (Burun) refused. Instead, Mr. Allen
25 handled the termination, with no knowledge of Mr. Mitchell’s performance, and as an “Interim”
26 employee.

27 59. Up until his medical leave, Mr. Mitchell had never received a disciplinary write-up had
28

1 never been given poor scores on his performance reviews, was a well-regarded and valued employee,
2 earning positive performance reviews, and the status of “meets expectations” at all times. Mr. Mitchell
3 had been a respected employee for the past five years working for Defendant.

4 60. After his medical leave, Defendant gave Mr. Mitchell no opportunity for job advancement
5 and ultimately terminated him.

6 61. In violation of Cal. Gov. Code §12940, Plaintiff was discriminated against based on age
7 and disability. Plaintiff is informed and believes that other co-workers of younger age have been given
8 opportunities for promotion and advancement as well as his previous position.

9 62. On information and belief, Mr. Nietupski eliminated senior staff members as he convinced
10 executive leadership at UC Davis that the senior staff members were the problem with construction and
11 development at UC Davis.

12 63. On information and belief, multiple senior staff members were terminated under the
13 pretense of “poor performance.”

14 64. On information and belief, UC Davis failed to investigate Mr. Mitchell’s reports,
15 concerns, and complaints. Instead, UC Davis terminated Mr. Mitchell, which violates the “Principles of
16 Community” as published and espoused by the Regents of the University of California, Davis.

17 65. Both California and Federal Law require employers such as UC Davis to engage with an
18 employee with a disability in a process to find a solution to the issues created by the disability. UC Davis
19 did not do so.

20 66. UC Davis retaliated against Mr. Mitchell by forcing a desk change, removing Mr.
21 Mitchell from the organization chart, removing him from meetings, failing to respond to Mr. Mitchell’s
22 questions and inquiries, back-filling and/or eliminating his position upon his return from medical leave,
23 and ultimately wrongfully terminating him.

24 67. In addition, Mr. Mitchell’s pension was significantly impacted.

25 68. UC Davis’ actions against Mr. Mitchell caused, and continue to cause, Mr. Mitchell to
26
27
28

1 suffer significant emotional distress. Mr. Mitchell experiences shame, embarrassment, insecurities,
2 depression, lethargy, sleeplessness, weight gain, as a result of UC Davis actions. Mr. Mitchell intends to
3 seek damages from UC Davis under the Fair Employment and Housing Act (“FEHA”) The seriousness
4 of these claims places UC Davis at an elevated risk of liability for monetary damages, including punitive
5 damages.

6
7 **B. Plaintiff David Brooks**

8 69. Plaintiff David Brooks is a 64-year-old Caucasian male who began working for UC Davis
9 as a Construction Superintendent/Project Manager on May 1, 2000, and later promoted to a Supervisor,
10 until his wrongful termination on October 27, 2022.

11 70. Mr. Brooks utilized his expertise, with over 35 years in the construction industry, to
12 manage specific construction projects, earning accolades from multiple divisions and department leaders.
13 Mr. Brooks managed over \$500 million dollars of construction projects, receiving a Certificate of
14 Achievement for Excellence in Teamwork/Collaboration from the CEO of UC Davis and Dean of the
15 School of Medicine. Therefore, Mr. Brooks was an exceptional employee for 22 years with Defendant as
16 he received excellent performance ratings in the categories of Far Exceeded, Fully Achieved, and
17 Expectations Met, prior to new management.

18 71. The following discrimination occurred when UC Davis discriminated against Mr. Brooks
19 on the basis of his age and time spent working for UC Davis.

20 72. On or around July of 2021, Jason Nietupski (“Nietupski”) was hired as the Executive
21 Director of Facilities, Planning and Development.

22 73. On or around April of 2022, Mr. Brooks’ former supervisor, Samara Lull (“Lull”) revealed to him that the new Executive Director of Planning and Development, and Ms. Lull’s manager,
23 Mr. Nietupski said, “He just needs to retire,” about Mr. Brooks.
24

25 74. On April 28, 2022, Ms. Lull was terminated and mentioned to Mr. Brooks, “The writing is
26 on the wall for you too I’m afraid.”

27 75. On May 11, 2022, Mr. Brooks was called into the Directors Office with Mr. Nietupski and
28 Vicky Vicente (“Vicente”), Campus Architect & Director of Compliance, Interim of Director of Capital

1 Projects present, and was removed from a high-profile seismic construction project that presented with a
2 lot of challenges. Mr. Brooks was given a vague answer as to why he was being removed, though he was
3 told it was not punitive, and that UC Davis was changing management and oversight of the seismic
4 projects. Mr. Brooks was not assigned to a new project at this meeting and was told he would receive a
5 new assignment later.

6 76. On or around May of 2022, Mr. Brooks emailed Ms. Vicente and inquired who his
7 supervisor would be now that Ms. Lull was no longer with UC Davis. Mr. Brooks never received a
8 response from Ms. Vincente or UC Davis informing him who his new supervisor would be going
9 forward.

10 77. Approximately four weeks later, Mr. Brooks received his next assignment, however he
11 realized it was not what his position description had outlined, it was an administrative assignment closing
12 out lingering projects, up to five years old, with outstanding contract payments, and open purchase orders
13 (some that lacked funds to pay), from former project managers who had left UC Davis. Even though Mr.
14 Brooks felt that this was a waste of his experience and talent, he accepted the tasks and completed them
15 without complaint. Mr. Brooks' new supervisor, Ms. Vicente, did not discuss the changed job duties
16 expectations, performance expectations, guidance for success or metrics for this new assignment.

17 78. On June 9, 2022, Mr. Brooks received a performance review by Ms. Vicente, who was
18 now his supervisor without notice and was one of the newest Managers in the department, who had only
19 been with UC Davis for three months, since February of 2022. The correct process for an annual review
20 was not followed, as per procedure Mr. Brooks' annual review period was May 1, 2021, through April
21 30, 2022. Because Mr. Brooks' review period ended on April 30, 2022, and his actual supervisor Ms.
22 Lull was terminated April 28, 2022, it was factual that Ms. Vicente had no historical or supervisory
23 knowledge of Mr. Brooks' performance at the time of his review.

24 79. In addition, and per procedure the performance review is to follow the following steps:
25 employee creates a self-evaluation and proposed goals, supervisor then reviews the employee self-
26 evaluation and proposed goals and completes the appraisal, an overall rating is then entered by
27 supervisor, the employee and supervisor meet, the appraisal is then released to employee, and finally the
28 employee reviews and acknowledges the appraisal.

1 80. However, on June 9, 2022, Ms. Vicente sent Mr. Brooks an email at 8:35 p.m. saying,
2 “Please review and acknowledge by June 10.” The official date that performance reviews were due in the
3 system was June 10, 2022, which gave Mr. Brooks one day to review and meet with Ms. Vicente. Upon
4 review, and for the first time in 22 years of employment Mr. Brooks received a “Some Expectations Met”
5 rating after receiving only “Exceeds Expectations” and “Fully Meets Expectations” at all times prior. Mr.
6 Brooks felt that UC Davis did not consider his accomplishments, which he outlined in his self-evaluation,
7 or provide timely and proactive feedback about areas of improvement needed during the review period.
8 In addition, Mr. Brooks felt that the new management used his review to discriminate against a senior
9 employee, his age, and time spent working for UC Davis.

10 81. It was typical performance review procedure and policy for the supervisor and the
11 employee to share responsibility for ongoing, timely and productive communication throughout the year.
12 Supervisors must clearly communicate goals and objectives, competency expectations and performance
13 measures. The performance appraisal process is an important form of communication between the
14 supervisor and employee, therefore, being as Mr. Brooks’ supervisor had only been employed with UC
15 Davis for three months prior to conducting his performance review, none of this important
16 communication would have time to take place effectively. Mr. Brooks felt it was clear that his self-
17 evaluation and proposed goals were not read or considered in Ms. Vincente’s evaluation. Ms. Vicente
18 never met with Mr. Brooks and paid no regard to his concern about the poor evaluation rating, which was
19 not reflective of the successes Mr. Brooks had performed over the review period and caused financial
20 harm.

21 82. On June 10, 2022, Mr. Brooks had an update meeting, regarding assignments, scheduled
22 with Ms. Vicente. At this meeting, Ms. Vicente asked Mr. Brooks to sign the review. Mr. Brooks asked if
23 this update meeting was his “performance review,” to which Ms. Vicente responded that they could
24 “make it if you want.” An official “review” meeting was never scheduled. Mr. Brooks responded that he
25 would not be signing the review. Ms. Vicente then proceeded with the update meeting, which at that time
26 assigned Mr. Brooks an additional twenty-five projects to close out.

27 83. On June 12, 2022, Mr. Brooks filed his First Complaint (“Complaint #1”) for a
28 performance management appeal for the inaccuracies in the creation of his performance review which

1 caused him financial harm. This Complaint #1 took several weeks to review and ultimately was
2 dismissed.

3 84. During the performance management appeal, HR assigned several reviewers that lacked
4 communication or guidance, which contributed to continued discrimination against Mr. Brooks. The
5 reviewers assigned to this case did not respond to Mr. Brooks at times and engaged in confusing and
6 lengthy back-and-forth conversations to get answers. The reviewers did not give impartial reviews nor
7 followed policy on several instances.

8 85. On July 20, 2022, Mr. Brooks Complaint #1 was officially denied after a rebuttal to his
9 complaint was written by Mr. Nietupski and a meeting with the reviewer. At the meeting Mr. Nietupski
10 did not attend as scheduled, instead Mr. Nietupski assigned a manager from a different area within the
11 division who had no supervisory oversight of Mr. Brooks and no insight into Mr. Brooks' work, to attend
12 the meeting.

13 86. On July 28, 2022, Mr. Brooks then requested a Step II appeal.

14 87. On September 27, 2022, Mr. Brooks received a notice of intent to terminate. At the time
15 of receiving this notice, Mr. Brooks Step II appeal process was not complete.

16 88. On September 27, 2022, Mr. Brooks requested a Skelly review for the notice of intent to
17 terminate, per the options given to him.

18 89. On October 3, 2022, Mr. Brooks emailed Ms. Vicente about health benefits, retirement,
19 voluntary separation, and severance as Mr. Brooks held the health benefits for his family, was nearing
20 retirement and needed to understand how this could affect a possible re-hire. All questions his supervisor
21 should have guided him on. Ms. Vicente responded by directing Mr. Brooks to contact Employee Labor
22 Relations ("ELR"). Mr. Brooks then inquired with ELR about voluntary separation and a severance
23 package. However, UC Davis did not follow up timely with Mr. Brooks' emails, nor did UC Davis
24 answer his questions and concerns about the impending notice of intent to terminate and how a
25 termination would affect his retirement, obtaining another position within UC Davis, and his benefits.

26 90. On October 3, 2022, after asking Employee Labor Relations ("ELR") his questions, Mr.
27 Brooks received a response of, "I will get back to you."

28 91. On October 7, 2022, the Employee Labor Relations directed Mr. Brooks to speak with his

1 Skelly reviewer about his questions.

2 92. On October 10, 2022, Mr. Brooks attended his Skelly review, and the reviewer said he
3 was not the person to ask as per directed by ELR.

4 93. On October 17, 2022, the Skelly reviewer agreed with UC Davis' discipline action.

5 94. On October 27, 2022, Mr. Brooks received his termination letter. Mr. Brooks was advised
6 by ELR to file a Second Complaint for retaliation to continue to push for a severance package as his Step
7 II appeal from Complaint #1 had not been resolved before UC Davis had issued this termination letter, as
8 well as his questions about voluntary separation and severance. This complaint was filed on November
9 28, 2022 ("Complaint # 2").

10 95. In addition, Mr. Brooks did not receive 30 days of additional pay per UC Davis policy
11 upon termination. There is 60 days in lieu of notice policy. Mr. Brooks was only paid for 30 days. In
12 addition, Mr. Brooks did not receive his salary and vacation pay upon his termination, instead it followed
13 in November of 2022. In this case UC Davis did not follow California Labor Law regarding prompt
14 payment.

15 96. For months, between October 2022 to October 2023, Mr. Brooks tried to garner a
16 severance package and change his impending termination to a voluntary separation, in an effort to seek
17 employment without a termination on his record. However, UC Davis and their ELR team continued to
18 fail Mr. Brooks by offering a complete lack of support and timely responses. The ELR representative that
19 Mr. Brooks spoke too, indicated that she would make sure Complaint #2 would be handled timely as she
20 acknowledged the lack of timely responses. Unfortunately, this was the last he heard from her. Per
21 policy, Mr. Brooks is eligible for six months' severance based on his years of service upon voluntary
22 separation from UC Davis. Instead, the ELR department offered Mr. Brooks two months' severance with
23 a change from termination to separation. Mr. Brooks' once again asked for 6 months per UC Davis
24 Policy.

25 97. On October 31, 2022, Mr. Brooks' Step II appeal was denied from Complaint #1.

26 98. On November 28, 2022, Mr. Brooks filed his Second Complaint ("Complaint #2") of
27 retaliation that ended in termination.

28 99. On March 16, 2023, Mr. Brooks' Complaint #2 was denied.

1 100. On April 18, 2023, Mr. Brooks requested a Step II appeal for Complaint #2.

2 101. On July 26, 2023, Mr. Brooks was offered a separation agreement and two months' salary
3 a second time.

4 102. On September 28, 2023, Mr. Brooks asked UC Davis for a draft of the separation
5 agreement.

6 103. On October 21, 2023, Mr. Brooks filed a Department of Industrial Relations (“DIR”)
7 claim with the Labor Commissioner’s Office as UC Davis did not pay out Mr. Brooks salary and
8 vacation upon his termination. In fact, his final paycheck was received four days after his termination and
9 his vacation pay was received twenty days after termination.

10 104. On October 25, 2023, Mr. Brooks again asked UC Davis for a draft of the separation
11 agreement.

12 105. On October 30, 2023, Employee Labor Relations responded that they would have the draft
13 settlement to Mr. Brooks by the end of the week for his review. However, this was Mr. Brooks’ last
14 correspondence from UC Davis. Mr. Brooks never heard from ELR or UC Davis after this date, nor was
15 his Step II appeal for Complaint #2 completed.

16 106. On information and belief, Mr. Nietupski eliminated senior staff members as he convinced
17 executive leadership at UC Davis that the senior staff members were the problem with construction and
18 development at UC Davis.

19 107. On information and belief, multiple senior staff members were terminated under the
20 pretense of “poor performance.”

21 108. Up until UC Davis hiring new management, Mr. Brooks had never received a disciplinary
22 write-up, never been given poor scores on his performance reviews, was a well-regarded and valued
23 employee, earning positive performance reviews, and the status of Far Exceeded, Fully Achieved, and
24 Expectations Met, prior to new management at all times. Mr. Brooks had been a respected employee for
25 the past twenty-two years working for Defendant.

26 109. Mr. Brooks had been wrongfully terminated at the age of 62, as he was forced to retire
27 early, but had planned to work until he was 65 years of age before retiring. Because he retired early, his
28 pension is 25-30% less than he would have received had he retired at 65 years of age, like he planned to

1 do.

2 110. In violation of Cal. Gov. Code §12940, Plaintiff was discriminated against based on age
3 and disability. Plaintiff is informed and believes that other co-workers of younger age have been given
4 opportunities for promotion and advancement as well as his previous position.

5 111. On information and belief, UC Davis failed to investigate Mr. Brooks' reports, concerns,
6 and complaints. Instead, UC Davis terminated Mr. Brooks.

7 112. UC Davis retaliated against Mr. Brooks by removing Mr. Brooks from construction
8 projects, giving him a poor performance review without good or substantial reason, removing staff from
9 under him without notice or reason, failing to inform Mr. Brooks of who his direct supervisor was, never
10 discussing any performance issues nor providing a serious letter of concern before termination, failing to
11 respond to Mr. Brooks' questions and inquiries, and ultimately wrongfully terminating him.

12 113. UC Davis' actions against Mr. Brooks caused, and continue to cause, Mr. Brooks to suffer
13 significant emotional distress. Mr. Brooks experiences lack of confidence, disappointment, anger, shame,
14 embarrassment, insecurities, depression, sleeplessness, high blood pressure, as a result of UC Davis'
15 actions. Mr. Brooks intends to seek damages from UC Davis under the Fair Employment and Housing
16 Act ("FEHA") The seriousness of these claims places UC Davis at an elevated risk of liability for
17 monetary damages, including punitive damages.

18 **C. Plaintiff Eric Graham**

19 114. Plaintiff Eric Graham is a 58-year-old Caucasian male who began working for UC Davis
20 as a Project Manager for UC Davis Campus on March 1, 2004. Mr. Graham then became a Project
21 Manager at UC Davis Health on or around February of 2020, until his wrongful termination on April 25,
22 2023.

23 115. Mr. Graham had received meets or exceeds expectations ratings in all performance
24 evaluations and reviews throughout his employment. Mr. Graham's extremely positive reputation with
25 clients left them shocked to hear of his later termination.

26 116. On or around July of 2021, Jason Nietupski ("Nietupski") was hired as the Executive
27 Director of Facilities, Planning and Development.

28 117. On May 19, 2022, at an all-hands Project Management meeting, Mr. Graham respectfully

1 challenged Mr. Nietupski as Mr. Nietupski discussed the lengthy project delivery timelines of the
2 department and suggested that the group collectively work harder to shorten the duration. Mr. Nietupski
3 then laid out a new procedure for the project delivery workflow which would include senior hospital
4 leadership review prior to obtaining Chancellor approval. He indicated that project managers were to
5 prepare additional project description documents that were different than the standard documents
6 required for Chancellor approval. In an attempt to understand the newly administered policy, Mr.
7 Graham asked a series of questions in front of the group aimed at trying to understand the scope,
8 schedule, and budget of the task. Other project managers also asked follow up questions, however the
9 bulk of them were asked by Mr. Graham. During the course of the dialog, Mr. Graham offered up
10 suggestions as how to streamline the process and compress the additional time (estimated during the
11 conversation of approximately 17 weeks). As the discussion proceeded, Mr. Nietupski became visibly
12 flustered and irritable at the inquiry. At no time during the discussion did Mr. Graham express resistance
13 to the policy, and stated so numerous times, but rather was simply seeking guidance from Mr. Nietupski
14 for how to effectively implement an immediate change of workflow policy given the numerous project
15 Mr. Graham had currently working their way through the project approval process.

16 118. Prior to this meeting, Mr. Graham had no warnings or discipline of any kind from UC
17 Davis nor had he received any counselling or performance criticism from his direct Supervisor.

18 119. The following discrimination occurred when UC Davis discriminated, harassed and
19 retaliated against Mr. Graham on the basis of his age and time spent working for UC Davis with
20 complaints and project failures, when at all times in his previous employment and over 19 years with UC
21 Davis, Mr. Graham had not experienced such failures nor complaints. Mr. Nietupski directed UC Davis
22 and Facilities Planning and Development, Victoria Vicente (“Vicente”) to begin the process of
23 “papering” Mr. Graham in preparation for termination.

24 120. On May 31, 2022, UC Davis and Mr. Graham’s Supervisor, Stephen Reiland (“Reiland”)
25 drafted a Letter of Serious Concern to Mr. Graham addressing a concern which stated that Mr. Graham
26 had violated the bullying and incivility policy at UC Davis. This incident involved a situation in which
27 Mr. Graham had allegedly hung up the telephone on Mr. Reiland, who then called him back and also
28 hung up on Mr. Graham. This incident happened five months before this Letter of Serious Concern was

1 issued to Mr. Graham and had previously been ignored by Human Resources.

2 121. Given that Mr. Graham had one of the heaviest project workloads of the department as
3 well as being the liaison between FP&D and the Department of Radiology which included the creation
4 and presentation of monthly all project update meetings, some of his projects were assigned to newly
5 hired project managers. At the time Mr. Graham did not view the re-distribution of his project workload
6 to other newly hired project managers so much as a reasonable re-alignment of his workload. However,
7 in the fall of 2022, the Department of Radiology monthly update meeting was reassigned to Mr.
8 Graham's immediate supervisor Mr. Reiland.

9 122. On October 3, 2022, Mr. Graham went out of FMLA leave due to the extreme amount of
10 pressure at work and overwhelming workload which caused stress, migraines, vision loss, weight gain,
11 health related issues, and triggered his PTSD.

12 123. On January 2, 2023, Mr. Graham returned to work from FMLA leave.

13 124. Upon his return, Mr. Reiland admitted to Mr. Graham that he was explaining to new hires
14 who Mr. Graham is by saying, "Eric is like an Autistic Genius."

15 125. On or around January 23, 2023, Mr. Graham lodged his complaints of discrimination,
16 harassment and hostile work environment due to age with the Harassment and Discrimination Assistance
17 and Preventions Program ("HDAPP"). Per the HDAPP instruction, Mr. Graham drafted a letter with his
18 list of concerns and complaints and submitted this letter on January 31, 2023. In addition, Mr. Graham
19 asked to be relocated to a department that would welcome his 40 years of experience. The Program
20 Manager, Yolanda Henderson ("Henderson") was assigned to Mr. Graham as his case specialist, however
21 Ms. Henderson never reached out to Mr. Graham as he was soon placed on administrative leave.

22 126. On January 31, 2023, UC Davis and Ms. Vicente issued a Notice of Intent to Terminate
23 ("NOI") letter to Mr. Graham. Inside this letter, Mr. Graham was accused of project failures and all
24 previous letters and complaints about him were included dating back to May 31, 2022, when he received
25 his first letter.

26 127. The following is a list of erroneous complaints against Mr. Graham:

- 27 a. On May 18, 2022, Mr. Graham was accused of project delays.
- 28 b. On June 2, 2022, Mr. Graham was accused of not submitting projects for conversion

1 to major capital projects, after having emailed to request the conversion. Mr. Graham
2 was then accused of delaying these projects.

- 3 c. On June 8, 2022, Mr. Graham was again accused of projects being “stagnant and
4 little/no progress”.
- 5 d. On June 9, 2022, UC Davis asserted that Mr. Graham received a Performance Plan
6 outlining specific expectations for his performance including project management and
7 task delivery. Ms. Vicente also implemented weekly meetings.
- 8 e. On August 10, 2022, Mr. Graham was accused of not having a CT scanner in place to
9 which impacted patient care and put “Level 1 Trauma at risk”.
- 10 f. On August 23, 2022, Mr. Graham was accused of project delays stating an update
11 indicated “no work had been completed since April 6, 2022.”
- 12 g. On September 1, 2022, Mr. Graham was accused of placing project files in a Box
13 location when his Superiors wanted his project files in a different location for all to
14 access.
- 15 h. On September 9, 2022, Mr. Graham was accused of project failures in which there
16 would be vibration implications from construction potentially shutting down
17 equipment.
- 18 i. On September 14, 2022, Mr. Graham was again accused of project delays due to “lack
19 of project management”.

20 128. Mr. Graham was immediately placed on paid administrative leave during the review
21 period after he received the Notice of Intent to Terminate letter.

22 129. All of the incidents described in the NOI, with the exception of one, occurred after the
23 May 19, 2022, meeting. Before the May 19, 2022, meeting, Mr. Graham had no performance counseling,
24 warnings, or discipline. All of the issues, with the exception of the Letter of Serious Intent, were created
25 by Ms. Vicente who is Mr. Graham’s indirect report, which is contrary to UC Davis practice.

26 130. On March 9, 2023, Mr. Graham issued a letter in response to the NOI. Mr. Graham
27 asserted that his pending termination is part of a pattern of age discrimination at UC Davis which became
28 apparent after Mr. Nietupski was hired in July of 2021 as the Executive Director of Facilities, Planning

1 and Development. Mr. Graham also defined how the NOI was unfounded, erroneous, unsupported by
2 evidence, a result of demonstrated bias, and that the alleged events are false or not sufficient grounds for
3 termination. Mr. Graham proved that that he performed his duties diligently throughout his employment
4 with UC Davis.

5 131. Mr. Graham had no recollection of receiving a Performance Plan, in fact, when he
6 received the NOI, this was Mr. Graham's first time seeing this Performance Plan document. In addition,
7 when Ms. Vicente took over Mr. Graham's weekly updates, it became evident to Mr. Graham that she
8 was taking notes. Mr. Graham asked for copies of Ms. Vicente's notes, which she declined. Given her
9 unwillingness to share, and fearing the worst, Mr. Graham began emailing Ms. Vicente update notes,
10 which Ms. Vicente never responded to.

11 132. Since Mr. Nietupski joined UC Davis, UC Davis had engaged in a pattern and practice of
12 discrimination against its older employees including age-related comments, taking projects away from
13 older employees to give them to younger employees, terminating or forcing older workers to quit or retire
14 based on pretextual reasons. Moreover, older workers were forced to hear comments from management
15 that certain older employees "just need to retire" and that management intended to "shame and then fire"
16 employees. This discriminatory message is reinforced by UC Davis' hiring and promotion policy
17 in which older internal applicants are routinely passed over in favor of younger, less qualified outside
18 hires.

19 133. Mr. Graham's NOI was unfounded and consistent with the pattern and practice of
20 discrimination against older workers. Mr. Graham's 19-year track records with UC Davis showcased
21 favorable performance evaluations including three favorable reviews while employed as Project
22 Manager.

23 134. On or around March of 2023, Mr. Graham participated in a Skelly hearing. The decision
24 was termination.

25 135. On April 25, 2023, Mr. Graham was terminated by UC Davis.

26 136. On information and belief, Mr. Nietupski targeted employees who were older in age.
27
28

1 137. On information and belief, UC Davis’ pension at 20 years of employment held lifetime
2 medical benefits. However, Mr. Graham was terminated at 19 years and 2 months, merely 10 months
3 short of his medical pension and was therefore denied of this benefit.

4 138. On information and belief, UC Davis rid itself of it’s older employees to avoid potential
5 pension payout.

6 139. In violation of Cal. Gov. Code §12940, Plaintiff was discriminated against based on age.
7 Plaintiff is informed and believes that other co-workers of younger age have been given opportunities for
8 promotion and advancement as well as his previous position.

9 140. On information and belief, UC Davis failed to investigate Mr. Graham’s reports, concerns,
10 and complaints. Instead, UC Davis terminated Mr. Graham.

11 141. On information and belief, Mr. Nietupski eliminated senior staff members as he convinced
12 executive leadership at UC Davis that the senior staff members were the problem with construction and
13 development at UC Davis.

14 142. On information and belief, multiple senior staff members were terminated under the
15 pretense of “poor performance.”

16 143. Up until UC Davis hiring new management, Mr. Graham had never received a
17 disciplinary write-up, never been given poor scores on his performance reviews, was a well-regarded and
18 valued employee, earning positive performance reviews, and the status of Far Exceeded, Fully Achieved,
19 and Expectations Met, prior to new management at all times. Mr. Graham had been a respected employee
20 for the past nineteen years working for Defendant.

21 144. UC Davis retaliated against Mr. Graham by re-distributing Mr. Graham’s workload to
22 other newly hired project managers, placing him on a PIP, and ultimately wrongfully terminating him.

23 145. UC Davis’ actions against Mr. Graham caused, and continue to cause, Mr. Graham to
24 suffer significant emotional distress. Mr. Graham experiences disappointment, anger, insecurities,
25 depression, sleeplessness, heart palpitations, as a result of UC Davis’ actions. Mr. Graham intends to
26 seek damages from UC Davis under the Fair Employment and Housing Act (“FEHA”) The seriousness
27 of these claims places UC Davis at an elevated risk of liability for monetary damages, including punitive
28

1 damages.

2 ***FIRST CAUSE OF ACTION***

3 *Retaliation in Violation of FEHA*

4 *(Government Code §12940, et seq.)*

5 *(All Plaintiffs Against All Defendants)*

6 146. Plaintiffs re-plead, re-allege, and incorporate by reference each allegation set forth in this
7 Complaint.

8 147. At all relevant times, the California Fair Employment & Housing Act, § 12940, et seq.,
9 was in full force and effect, and binding on Defendants.

10 148. FEHA makes it an unlawful employment practice for an employer to retaliate against an
11 employee who has opposed a forbidden practice or filed a complaint against an employer or supervisor.
12 Government Code §12940(h).

13 149. Plaintiffs made multiple complaints to Defendants about discriminatory harassment they
14 were experiencing from their managers and superiors alike based on Plaintiffs' age, and disability.
15

16 150. Defendants retaliated against Plaintiff Brett Mitchell by forcing a desk change, removing
17 Mr. Mitchell from the organization chart, removing him from meetings, failing to respond to Mr.
18 Mitchell's questions and inquiries, verbally threatening shame and humiliation in the presence of other
19 staff, back-filling and/or eliminating his position upon his return from medical leave, and ultimately
20 wrongfully terminating him.

21 151. Defendants retaliated against Plaintiff David Brooks by removing Mr. Brooks from
22 construction projects, giving him a poor performance review without good or substantial reason,
23 removing staff from under him without notice or reason, failing to inform Mr. Brooks of who his direct
24 supervisor was, never discussing any performance issues nor providing a serious letter of concern before
25 termination, failing to respond to Mr. Brooks' questions and inquiries, and ultimately wrongfully
26 terminating him.

27 152. Defendants retaliated against Plaintiff Eric Graham re-distributing Mr. Graham's
28

1 workload to other newly hired project managers, placing him on a PIP, and ultimately wrongfully
2 terminating him.

3 153. Plaintiffs were harmed.

4 154. Defendants' conduct was a substantial factor in causing Plaintiffs' harm.

5 155. The conduct of Defendants and each of them as described above was malicious,
6 fraudulent, or oppressive and done with a willful and conscious disregard for Plaintiffs' rights.

7 Defendants and each of them, and their agents/employees or supervisors, authorized, condoned, and
8 ratified the unlawful conduct of each other. Consequently, Plaintiffs are entitled to punitive damages
9 against each of said Defendants.
10

11 ***SECOND CAUSE OF ACTION***

12 *Retaliation in Violation of Labor Code §1102.5, et seq.*

13 *(All Plaintiffs Against All Defendants)*

14 156. Plaintiffs re-plead, re-allege, and incorporate by reference each allegation set forth in this
15 Complaint.

16 157. At all relevant times, California Labor Code was in full force and effect, and binding on
17 Defendants.

18 158. Labor Code §1102.5 makes it an unlawful for an employer to retaliate against an
19 employee who has for disclosing information the employee reasonable believes discloses a violation of
20 state or federal statute, or a violation of or noncompliance with a local, state, or federal rule or regulation.
21

22 159. Plaintiffs made multiple complaints to Defendants regarding discrimination, hostile work
23 environment, and intimidation they were experiencing from UC Davis' superiors and managers alike.

24 160. Defendants retaliated against Plaintiff Brett Mitchell by forcing a desk change, removing
25 Mr. Mitchell from the organization chart, removing him from meetings, failing to respond to Mr.
26 Mitchell's questions and inquiries, verbally threatening shame and humiliation in the presence of other
27 staff, back-filling and/or eliminating his position upon his return from medical leave, and ultimately
28 wrongfully terminating him.

1 . . Chapter 5 (commencing with Section 1101) of Part 3 of Division 2, or
2 because the employee . . . or because of the exercise by the employee or
3 applicant for employment on behalf of himself, herself, or others of any
rights afforded him or her.

4 (b)(1) Any employee who is discharged, threatened with discharge,
5 demoted, suspended, retaliated against, subjected to an adverse action, or in
6 any other manner discriminated against in the terms and conditions of his or
7 her employment because the employee engaged in any conduct delineated in
this chapter, including . . . Chapter 5 (commencing with Section 1101) of
Part 3 of Division 2 . . . shall be entitled to reinstatement and reimbursement
for lost wages and work benefits caused by those acts of the employer.

8 169. Defendants were Plaintiffs' employer, and Plaintiffs were Defendants' employee.

9 170. Plaintiffs made multiple complaints to Defendants regarding discrimination, hostile work
10 environment, and intimidation they were experiencing from their managers and supervisors alike based
11 on Plaintiffs' age, and disability.

12 171. Defendants retaliated against Plaintiff Brett Mitchell by forcing a desk change, removing
13 Mr. Mitchell from the organization chart, removing him from meetings, failing to respond to Mr.
14 Mitchell's questions and inquiries, verbally threatening shame and humiliation in the presence of other
15 staff, back-filling and/or eliminating his position upon his return from medical leave, and ultimately
16 wrongfully terminating him.

17 172. Defendants retaliated against Plaintiff David Brooks by removing Mr. Brooks from
18 construction projects, giving him a poor performance review without good or substantial reason,
19 removing staff from under him without notice or reason, failing to inform Mr. Brooks of who his direct
20 supervisor was, never discussing any performance issues nor providing a serious letter of concern before
21 termination, failing to respond to Mr. Brooks' questions and inquiries, and ultimately wrongfully
22 terminating him.

23 173. Defendants retaliated against Plaintiff Eric Graham re-distributing Mr. Graham's
24 workload to other newly hired project managers, placing him on a PIP, and ultimately wrongfully
25 terminating him.

26 174. Plaintiffs were harmed.

27 175. Defendants' conduct was a substantial factor in causing Plaintiffs' harm.
28

1 reason of their age, and were subjected to harassment, discrimination and retaliation by Defendants.

2 185. Defendants wrongfully discriminated against Plaintiffs based on their age.

3 186. Defendants gave employees of the younger age more work opportunities and promotions
4 than they offered or allowed for Plaintiffs.

5 187. Defendants offered other employees of the younger age to remain in their employment
6 while three employees, the Plaintiffs, all over the age of 50, were terminated.

7 188. Such actions were in direct violation of Government Code § 12940 and were done with
8 the intent of depriving Plaintiffs of their rights to equal employment opportunity and for the purpose of
9 depriving Plaintiffs of the benefits of their employment.

10 189. Defendants engaged in the aforementioned unlawful actions, including but not limited to
11 discrimination, harassment and retaliation on the basis of Plaintiffs' age.

12 190. Despite being aware of the discriminatory treatment of Plaintiffs, Defendants failed to
13 take any steps to prevent or correct the misconduct.

14 191. Plaintiffs believe and alleges that Plaintiffs' age, and disability were a substantial and
15 determining factor in Defendants' decision to terminate Plaintiffs' employment.

16 192. Defendants' termination of Plaintiffs as alleged in this complaint constitutes an
17 unlawful employment practice in violation of Government Code § 12940(a).

18 193. As direct, foreseeable, and proximate results of Defendants' discriminatory acts, Plaintiffs
19 have suffered and continues to suffer substantial losses in earnings and job benefits, and has suffered and
20 continues to suffer humiliation, embarrassment and mental and emotional distress, and discomfort, all to
21 Plaintiffs' damage in an amount to be proven at trial.

22 194. Under Government Code § 12940, Plaintiffs are entitled to recover Plaintiffs' economic
23 and noneconomic damages caused by Defendants' unlawful practices. Plaintiffs are also entitled to
24 reasonable attorney's fees and costs pursuant to Government Code § 12965.

25 195. The conduct of Defendants and each of them as described above was malicious, fraudulent,
26 or oppressive and done with a willful and conscious disregard for Plaintiffs' rights. Defendants and each
27 of them, and their agent/employees or supervisors, authorized, condoned, and ratified the unlawful conduct
28 of each other. Consequently, Plaintiff is entitled to punitive damages against each of said Defendants.

FIFTH CAUSE OF ACTION

1 emotional distress, including but not limited to, disappointment, anger, insecurities, depression,
2 sleeplessness, heart palpitations.

3 209. Under Government Code § 12940, Plaintiffs are entitled to recover economic and
4 noneconomic damages caused by Defendants' discriminatory practices based on Plaintiffs' disability and
5 violation of the Fair Employment and Housing Act. Plaintiffs are also entitled to reasonable attorney's fees
6 and costs pursuant to Government Code § 12965.

7 ***SIXTH CAUSE OF ACTION***

8 *Failure to Engage in Good Faith Interactive Process in Violation of FEHA*

9 *(Government Code § 12940, et seq.)*

10 *(Plaintiff Brett Mitchell and Plaintiff Eric Graham Against All Defendants)*

11 210. Plaintiffs re-plead, re-allege, and incorporate by reference each and every allegation set
12 forth in this Complaint.

13 211. Government Code § 12940(n) provides in relevant part:

14 It is an unlawful employment practice. . . (n) For an employer or other
15 entity covered by this part to fail to engage in a timely, good faith,
16 interactive process with the employee or applicant to determine effective
17 reasonable accommodations, if any, in response to a request for reasonable
18 accommodation by an employee or applicant with a known physical or
19 mental disability or known medical condition.

20 212. California Code of Regulations, Title 2 §11069 provides in relevant part:

21 (a) Interactive Process. When needed to identify or implement an
22 effective, reasonable accommodation for an employee or applicant with a
23 disability, the FEHA requires a timely, good faith, interactive process
24 between an employer or other covered entity and an applicant, employee,
25 or the individual's representative, with a known physical or mental
26 disability or medical condition. Both the employer or other covered entity
27 and the applicant, employee or the individual's representative shall
28 exchange essential information identified below without delay or
obstruction of the process.

213. Defendant was Plaintiffs' employer, and Plaintiffs were Defendants' employee.

214. Defendant became aware that Plaintiffs had a disability, that limited a major life activity.

215. Plaintiffs were able to perform the essential job duties of Plaintiffs' position with reasonable
accommodation for Plaintiffs' disability, and after taking time off for a medical leave of absence.

1 forth in this Complaint.

2 228. Government Code § 12940(m)(1) provides in relevant part:

3 It is an unlawful employment practice. . . (m)(1) [f]or an employer or other
4 entity covered by this part to fail to make reasonable accommodation for
the known physical or mental disability of an applicant or employee.

5 229. California Code of Regulations, Title 2 § 11068 provides in relevant part:

6 (a) Affirmative Duty. An employer or other covered entity has an
7 affirmative duty to make reasonable accommodation(s) for the disability of
8 any individual applicant or employee if the employer or other covered
9 entity knows of the disability, unless the employer or other covered entity
can demonstrate, after engaging in the interactive process, that the
accommodation would impose an undue hardship.

10 . . .

11 (e) Any and all reasonable accommodations. An employer or other
12 covered entity is required to consider any and all reasonable
13 accommodations of which it is aware or that are brought to its attention by
14 the applicant or employee, except ones that create an undue hardship. The
15 employer or other covered entity shall consider the preference of the
applicant or employee to be accommodated but has the right to select and
implement an accommodation that is effective for both the employee and
the employer or other covered entity.

16 230. Defendant was Plaintiffs' employer, and Plaintiffs were Defendants' employee.

17 231. Defendant became aware that Plaintiffs had a disability, that limited a major life activity.

18 232. Plaintiffs were able to perform the essential job duties of Plaintiffs' position after taking
19 time off for a medical leave of absence.

20 233. After his medical leave, Defendant gave Plaintiff Brett Mitchell no opportunity for job
21 advancement and ultimately terminated him in violation of the Fair Employment and Housing Act.

22 234. After his medical leave, Defendant gave Plaintiff Eric Graham no opportunity for job
23 advancement and ultimately terminated him in violation of the Fair Employment and Housing Act.

24 235. Plaintiffs suffered harm.

25 236. Defendant's conduct was a substantial factor in causing Plaintiffs' harm.

26 237. The conduct of Defendant was a substantial factor in causing Plaintiff Brett Mitchell
27 emotional distress, including but not limited to, shame, embarrassment, insecurities, depression, lethargy,
28

1 sleeplessness, weight gain.

2 238. The conduct of Defendant was a substantial factor in causing Plaintiff Eric Graham
3 emotional distress, including but not limited to, disappointment, anger, insecurities, depression,
4 sleeplessness, heart palpitations.

5 239. Under Government Code section 12940, Plaintiffs are entitled to recover economic and
6 noneconomic damages caused by Defendants' discriminatory practices based on Plaintiffs' disability and
7 violation of the Fair Employment and Housing Act. Plaintiffs are also entitled to reasonable attorney's fees
8 and costs pursuant to Government Code § 12965.

9 ***EIGHTH CAUSE OF ACTION***

10 *Hostile Work Environment Harassment in Violation of FEHA*

11 *(Government Code § 12940, et seq.)*

12 *(All Plaintiffs Against All Defendants)*

13 240. Plaintiffs re-plead, re-allege, and incorporate by reference each and every allegation set
14 forth in this Complaint.

15 241. Defendants, and each of them, either individually and/or through their agents, engaged in
16 the foregoing conduct, which constitutes a pattern and practice of hostile work environment harassment
17 in violation of Government Code § 12940(j), which provides that harassment of employees is an
18 unlawful employment practice.
19

20 242. Plaintiffs endured harassing conduct by Defendants and/or Defendant's manager's that
21 took place throughout Plaintiffs' working environment.

22 243. Plaintiffs considered the work environment to be hostile or abusive towards people with
23 disabilities and who are over the age of 50.

24 244. Plaintiffs' manager and superiors engaged in the conduct.

25 245. Defendants knew or should have known of the conduct and failed to take any corrective
26 action whatsoever, let alone immediate appropriate corrective action.
27
28

1 Defendants and each of them, and their agents/employees or supervisors, authorized, condoned, and
2 ratified the unlawful conduct of each other. Consequently, Plaintiffs are entitled to punitive damages
3 against each of said Defendants.

4 ***TENTH CAUSE OF ACTION***

5 *Wrongful Termination in Violation of Public Policy*

6 *(All Plaintiffs Against All Defendants)*

7 255. Plaintiffs re-plead, re-allege, and incorporate by reference each and every allegation set
8 forth in this Complaint.

9 256. Art. I, § 8, of the California Constitution provides that a person may not be disqualified
10 from pursuing a profession or employment because of their age or disability.

11 257. At all times herein mentioned in this complaint, California Government Code § 12940 (a),
12 was in full force and effect and were binding on the Defendants and the Defendants were subject to their
13 terms, and therefore Defendant was required to refrain from violations of public policy, including
14 discrimination based on age and disability in violation of FEHA and in retaliation for complaining of said
15 discrimination.

16 258. Defendants were Plaintiffs' employer, and Plaintiffs were Defendants' employee.

17 259. Defendant terminated Plaintiffs in violation of Plaintiffs' rights and public policy.

18 260. Plaintiffs are informed and believes and thereon alleges that his protected status
19 (age/disability) and/or their protestation against being discriminated against based on said protected
20 status as alleged above, were, in part, factors in Defendants' decision to terminate Plaintiffs'
21 employment.

22 261. Plaintiffs were harmed.

23 262. Defendants' conduct was a substantial factor in causing Plaintiffs' harm.

24 263. As a proximate result of Defendants' conduct, Plaintiffs have suffered special damages in
25 the form of lost earnings, benefits and/or out of pocket expenses in an amount according to proof at the
26 time of trial. As a further direct and proximate result of Defendants' conduct, Plaintiffs will suffer
27 additional special damages in the form of lost future earnings, pension package, medical benefits
28

1 package, reset of accrued vacation time, sick time, loss of flex time, loss of employer seniority, loss of
2 ability to rehire within UC Davis, other public agencies, and/or other prospective damages in an amount
3 according to proof at the time of trial.

4 264. As a further direct and proximate result of Defendants' conduct, Plaintiffs have suffered
5 loss of financial stability, peace of mind and future security, and has suffered embarrassment,
6 humiliation, mental and emotional pain and distress and discomfort, all to their detriment and damage in
7 amounts not fully ascertained but within the jurisdiction of this court and subject to proof at the time of
8 trial.

9 265. In violation of public policy, Defendants terminated Plaintiff Brett Mitchell because he is
10 60-year-old male who was wrongfully terminated, despite the fact that Defendants knew that Plaintiff
11 was experienced and able to perform the essential functions of his position and had done so since 2018 as
12 a Project Manager, later being promoted to Director of Facilities Expansion.

13 266. In violation of public policy, Defendants terminated Plaintiff David Brooks because he is
14 64-year-old male who was wrongfully terminated, despite the fact that Defendants knew that Plaintiff
15 was experienced and able to perform the essential functions of his position and had done so since 2000 as
16 a Constructions Superintendent/Project Manager later being promoted to Supervisor.

17 267. In violation of public policy, Defendants terminated Plaintiff Eric Graham because he is
18 58-year-old male who was wrongfully terminated, despite the fact that Defendants knew that Plaintiff
19 was experienced and able to perform the essential functions of his position and had done so since 2004 as
20 a Project Manager.

21 268. The conduct of Defendants as described above was malicious, fraudulent, or oppressive
22 and done with a willful and conscious disregard for Plaintiffs' rights. Defendant and each of them, and
23 their agents/employees or supervisors, authorized, condoned and ratified the unlawful conduct of each
24 other. Consequently, Plaintiffs is entitled to punitive damages against each of said Defendants.

25 **PRAYER FOR RELIEF**

26 **WHEREFORE**, Plaintiffs prays for judgment against the Defendants, and each of them, as
27 follows:

- 28 1. Compensatory damages including emotional distress damages and lost wages, benefits

- 1 and interest in a sum according to proof;
- 2 2. Interest on judgment, including prejudgment interest, at the legal rate;
- 3 3. Punitive damages against Defendants in a sum according to proof;
- 4 4. Attorney's fees and costs; and
- 5 5. For any further legal and equitable relief, the Court deems proper.
- 6

7 Dated: March 18, 2025.

RATNER MOLINEAUX, LLP

8 

9 _____
10 David S. Ratner
11 Shelley A. Molineaux
12 Attorneys for Plaintiffs Brett Mitchell, David Brooks,
13 Eric Graham

12 **DEMAND FOR JURY TRIAL**

13 Plaintiff hereby demands trial of his claims by jury to the extent authorized by law.

14

15 Respectfully submitted,

16

17 Dated: March 18, 2025.

RATNER MOLINEAUX, LLP

18 

19 _____
20 David S. Ratner
21 Shelley A. Molineaux
22 Attorneys for Plaintiffs Brett Mitchell, David Brooks,
23 Eric Graham

24

25

26

27

28

EXHIBIT A



Civil Rights Department

KEVIN KISH, DIRECTOR

651 Bannan Street, Suite 200 | Sacramento | CA | 95811
1-800-884-1684 (voice) | 1-800-700-2320 (TTY) | California's Relay Service at 711
calcivilrights.ca.gov | contact.center@calcivilrights.ca.gov

March 18, 2025

Shelley Molineaux
1148 Alpine Rd., Suite 201
Walnut Creek, CA 94596

RE: **Notice to Complainant's Attorney**
CRD Matter Number: 202503-28590918
Right to Sue: Mitchell / The Regents of the University of California dba UC Davis
Health

Dear Shelley Molineaux:

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

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

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

Sincerely,

Civil Rights Department



Civil Rights Department

KEVIN KISH, DIRECTOR

651 Bannan Street, Suite 200 | Sacramento | CA | 95811
1-800-884-1684 (voice) | 1-800-700-2320 (TTY) | California's Relay Service at 711
calcivilrights.ca.gov | contact.center@calcivilrights.ca.gov

March 18, 2025

RE: Notice of Filing of Discrimination Complaint

CRD Matter Number: 202503-28590918

Right to Sue: Mitchell / The Regents of the University of California dba UC Davis Health

To All Respondent(s):

Enclosed is a copy of a complaint of discrimination that has been filed with the Civil Rights Department (CRD) in accordance with Government Code section 12960. This constitutes service of the complaint pursuant to Government Code section 12962. The complainant has requested an authorization to file a lawsuit. A copy of the Notice of Case Closure and Right to Sue is enclosed for your records.

Please refer to the attached complaint for a list of all respondent(s) and their contact information.

No response to CRD is requested or required.

Sincerely,

Civil Rights Department



Civil Rights Department

KEVIN KISH, DIRECTOR

651 Bannan Street, Suite 200 | Sacramento | CA | 95811
1-800-884-1684 (voice) | 1-800-700-2320 (TTY) | California's Relay Service at 711
calcivilrights.ca.gov | contact.center@calcivilrights.ca.gov

March 18, 2025

Brett Mitchell
[REDACTED]
[REDACTED]

RE: Notice of Case Closure and Right to Sue

CRD Matter Number: 202503-28590918

Right to Sue: Mitchell / The Regents of the University of California dba UC Davis Health

Dear Brett Mitchell:

This letter informs you that the above-referenced complaint filed with the Civil Rights Department (CRD) has been closed effective March 18, 2025 because an immediate Right to Sue notice was requested.

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

After receiving a Right-to-Sue notice from CRD, you may have the right to file your complaint with a local government agency that enforces employment anti-discrimination laws if one exists in your area that is authorized to accept your complaint. If you decide to file with a local agency, you must file before the deadline for filing a lawsuit that is on your Right-to-Sue notice. Filing your complaint with a local agency does not prevent you from also filing a lawsuit in court.

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

Sincerely,

Civil Rights Department

1 **COMPLAINT OF EMPLOYMENT DISCRIMINATION**
2 **BEFORE THE STATE OF CALIFORNIA**
3 **Civil Rights Department**
4 **Under the California Fair Employment and Housing Act**
5 **(Gov. Code, § 12900 et seq.)**

6 **In the Matter of the Complaint of**

7 Brett Mitchell

CRD No. 202503-28590918

8 Complainant,

9 vs.

10 The Regents of the University of California dba UC
11 Davis Health
12 4800 2nd Avenue, FSSB Suite 3010
13 Sacramento, CA 95817

14 Respondents

15
16 **1. Respondent The Regents of the University of California dba UC Davis Health is an employer subject to suit under the California Fair Employment and Housing Act (FEHA) (Gov. Code, § 12900 et seq.).**

17 **2. Complainant Brett Mitchell, resides in the City of [REDACTED] State of CA.**

18 **3. Complainant alleges that on or about June 6, 2022, respondent took the following adverse actions:**

19 **Complainant was harassed** because of complainant's age (40 and over), other, disability (physical, intellectual/developmental, mental health/psychiatric), family care and medical leave (cfra) related to serious health condition of employee or family member, child bonding, or military exigencies.

20 **Complainant was discriminated against** because of complainant's age (40 and over), other, disability (physical, intellectual/developmental, mental health/psychiatric), family care and medical leave (cfra) related to serious health condition of employee or family member, child bonding, or military exigencies and as a result of the discrimination was terminated, denied hire or promotion, other, denied work opportunities or assignments, denied accommodation for a disability.

1 **Complainant experienced retaliation** because complainant reported or resisted any form
2 of discrimination or harassment, requested or used a disability-related accommodation,
3 requested or used family care and medical leave (cfra) related to serious health condition of
4 employee or family member, child bonding, or military exigencies and as a result was
5 terminated, denied hire or promotion, other, denied work opportunities or assignments,
6 denied accommodation for a disability.

7 **Additional Complaint Details:** Plaintiff Brett Mitchell (“Mitchell”) is a 60-year-old Caucasian
8 male who began working for UC Davis as a Project Manager on October 1, 2018. He
9 received exemplary performance evaluations and three promotions, ultimately becoming
10 Director of Facilities Expansion.

11 UC Davis wrongfully fired Mr. Mitchell on June 6, 2022.

12 On December 1, 2018, UC Davis assigned Mr. Mitchell as the Project Executive for
13 the Ernest E. Tschannen Eye Institute.

14 On June 1, 2019, UC Davis promoted Mr. Mitchell to Interim Planning Manager with
15 a salary increase.

16 On January 1, 2020, UC Davis promoted Mr. Mitchell to Director of Facilities
17 Expansion with a salary increase. In this role, Mr. Mitchell successfully led procurements
18 that have led to the flagship development of the Folsom Medical Clinic; the new call center
19 at 10888 White Rock road in Rancho Cordova, the new Administration Facility at 10850,
20 White Rock Road in Rancho Cordova, the new Physical Therapy Clinic at Point West in
21 Sacramento, the Medical Office Building on E. Roseville Pkwy in Roseville and a strategic
22 land acquisition of 50 acres to expand medical services to the Existing UC Davis Medical
23 Group in Rocklin on W. Ranch View Drive.

24 On November 1, 2020, Mr. Mitchell received a merit bonus based on his job
25 performance.

26 On or around July of 2021, UC Davis hired Jason Nietupski (“Nietupski”) as the
27 Executive Director of Facilities, Planning and Development. Mr. Nietupski became Mr.
28 Mitchell’s boss.

On August 31, 2021, Mr. Mitchell received a stipend intended for “information flow”
and was made responsible to process information related to Aggie Square (“AS”). Mr.
Mitchell’s sole responsibility in this role was the transference of information with respect to
AS, which was a campus initiative, to UC Davis Health employees, for their information and
action thereto. This position held no responsibility, nor ability to act on action items required
to complete needed work. Only to advise staff, under Mr. Nietupski employ, to commit
resources to act in performance of the AS initiative.

On or around early September of 2021, Mr. Mitchell informed Mr. Nietupski that he
must take a leave of absence under the Family Medical Leave Act (“FMLA”) to care for his
parents, who were both suffering from terminal cancer. Mr. Mitchell’s parents have since
died.

On September 1, 2021, Mr. Mitchell informed Mr. Nietupski that UC Davis needed to
move fleet services to allow for the planned expansion of AS. Mr. Nietupski, along with his
employees, now became solely responsible for AS, even though it was one of his grounds
for termination. Mr. Nietupski himself failed to take action on the AS initiative, and then in a

1 calculated manner, placed the blame for inactivity on Mr. Mitchell when it became an issue
2 for the Chancellor, Gary May (“May”), as an act of discrimination.

3 On November 1, 2021, Mr. Mitchell received a merit bonus, which was based on his
4 job performance.

5 Mr. Mitchell took Medical Leave, using his own accumulated sick time, in
6 September and December of 2021, to provide care for his ailing parents.

7 Mr. Mitchell was also hospitalized himself for a week in December of 2021.

8 The following discrimination occurred when UC Davis discriminated against Mr.
9 Mitchell on the basis of his age and the need to exercise Medical Leave to care for himself
10 and his family.

11 On or around October 1, 2021, during a Teams call, Mr. Nietupski threatened Mr.
12 Mitchell saying, “I will shame you, and then I will fire you, [if you can’t do your job]”. This
13 threat was witnessed by several other individuals on the call.

14 This same threat was delivered again personally to Mr. Mitchell in his office, while
15 again being witnessed by others in that office approximately two weeks later. Mr. Mitchell
16 speculated that this threat was an attempt to intimidate Mr. Mitchell as part of his
17 discriminatory practice. Along with this repeated threat, “Mr. Nietupski stated, “I don’t care, I
18 have been sued before”.

19 On or around December 1, 2021, Mr. Nietupski was witnessed saying, “I have given
20 Brett [Mitchell] three things to do, and, to my surprise, he has gotten them done,” to a fellow
21 employee. This shows a biased contempt for Mr. Mitchell’s ability, based solely on Mr.
22 Nietupski’s contempt for his age.

23 Chris Burun (“Burun”) was hired as the Associate Executive Director and stayed with
24 UC Davis for a total of six weeks before quitting. Mr. Burun contacted Mr. Mitchell after
25 departing suggesting to him that he had grounds to seek legal help for his treatment at UC
26 Davis and at the hands of Mr. Nietupski.

27 On or around December 1, 2021, Mr. Nietupski passed over Mr. Mitchell for the
28 position of Interim Associate Executive Director in favor of Craig Allen (“Allen”), who is
significantly younger and less credentialed for the position than Mr. Mitchell. This, despite
the human resources department’s regular warning to Mr. Nietupski that he does not make
interim replacements without the proper offerings to other eligible employees. And, despite
Mr. Nietupski own efficiency consultant, Dr. Thomas Kurlmel, suggestion that Mr. Mitchell be
staffed in an executive role.

On information and belief, the position of Interim Associate Executive Director was
not advertised for competition, as is required for UC Davis.

On or around January 1, 2022, Mr. Nietupski followed through with his threatening
behavior when he evicted Mr. Mitchell from the corner office he had occupied after having
been promoted three times prior to Mr. Nietupski’s tenure by placing Mr. Mitchell in a cubicle
in an effort to humiliate and force Mr. Mitchell to resign.

Mr. Allen was then placed in Mr. Mitchell’s corner office, which he was removed
from.

In addition, Mr. Nietupski began excluding Mr. Mitchell from meetings.

Mr. Nietupski also took away the successful Folsom Project, with no notice, from Mr.
Mitchell. Mr. Mitchell learned this through a coworker instead of his manager.

1 Mr. Mitchell was never placed on a performance improvement plan or “PIP”, he was
2 not given any notice of performance issues, nor given any opportunity to improve his alleged
3 poor performance.

4 In fact, Mr. Mitchell had regular meetings and great reviews prior to his wrongful
5 termination. In fact, then Chief Financial Officer (CFO), Tim Maurice (“Maurice”), who was
6 also Mr. Nietupski’s Manager, on or about January 1, 2022, informed Mr. Mitchell that “he
7 was doing a great job”.

8 Instead, Mr. Nietupski immediately began to remove responsibilities from Mr.
9 Mitchell.

10 Mr. Nietupski secretly removed Mr. Mitchell from the organization chart. In addition,
11 Mr. Nietupski took away Mr. Mitchell’s stipend and falsely accused him of taking kickbacks
12 from a vendor on or around February 1, 2022. Mr. Nietupski denied Mr. Mitchell an equity
13 raise and finally falsely blamed Mr. Mitchell for his failure to manage a critical project as a
14 pretext to terminate Mr. Mitchell.

15 In March of 2022, Mr. Mitchell was provided a “Notice of Intent to terminate” at a
16 meeting with Mr. Nietupski, Mr. Burun, Mr. Mitchell and a representative from Human
17 Resources. In that meeting, Mr. Nietupski handed Mr. Mitchell a packet and notified him that
18 this was his “Notice of Termination”. The Human Resources representative corrected Mr.
19 Nietupski and added that it was a “Notice of Intent to Terminate”. Thus showing Mr.
20 Nietupski’s intent, without cause or opportunity to hear the facts. After a prolonged Skelly
21 process, in which UC Davis took an excessive amount of time for review, Mr. Mitchell
22 received a “Notice of Termination” via special delivery on March 6, 2022.

23 On information and belief, Mr. Nietupski targeted employees who were older in age.
24 Mr. Mitchell was close to his five-year mark with UC Davis which would have given
25 him retirement benefits based on the UC Retirement calculator, which brings a substantial
26 boost. Being terminated would also cost Mr. Mitchell his Title IV Income Driven Student
27 Loan Payment determination.

28 A Skelly process began immediately upon a “Notice of Intent to Terminate”. A
hearing for Mr. Mitchell was conducted in April of 2022.

However, Mr. Mitchell was wrongfully terminated on June 6, 2022. The reason Mr.
Mitchell was terminated was explained as he had “mismanaged consultants”. However, Mr.
Mitchell argued in his Skelly hearing that the first consultant was not currently under
contract, the second consultant was managed well, and the third consultant’s contract
started in January of 2022, and Mr. Mitchell was released in March of 2022, resulting in
hardly any time to work on this contract.

In a later meeting between Mr. Mitchell and Mr. Burun, Mr. Mitchell learned that Mr.
Burun was given the task of terminating Mr. Mitchell, and he (Burun) refused. Instead, Mr.
Allen handled the termination, with no knowledge of Mr. Mitchell’s performance, and as an
“Interim” employee.

Up until his medical leave, Mr. Mitchell had never received a disciplinary write-up had
never been given poor scores on his performance reviews, was a well-regarded and valued
employee, earning positive performance reviews, and the status of “meets expectations” at
all times. Mr. Mitchell had been a respected employee for the past five years working for
Defendant.

After his medical leave, Defendant gave Mr. Mitchell no opportunity for job
advancement and ultimately terminated him.

1 In violation of Cal. Gov. Code §12940, Plaintiff was discriminated against based on
2 age and disability. Plaintiff is informed and believes that other co-workers of younger age
3 have been given opportunities for promotion and advancement as well as his previous
4 position.

5 On information and belief, Mr. Nietupski eliminated senior staff members as he
6 convinced executive leadership at UC Davis that the senior staff members were the problem
7 with construction and development at UC Davis.

8 On information and belief, multiple senior staff members were terminated under the
9 pretense of "poor performance."

10 On information and belief, UC Davis failed to investigate Mr. Mitchell's reports,
11 concerns, and complaints. Instead, UC Davis terminated Mr. Mitchell, which violates the
12 "Principles of Community" as published and espoused by the Regents of the University of
13 California, Davis.

14 Both California and Federal Law require employers such as UC Davis to engage with
15 an employee with a disability in a process to find a solution to the issues created by the
16 disability. UC Davis did not do so.

17 UC Davis retaliated against Mr. Mitchell by forcing a desk change, removing Mr.
18 Mitchell from the organization chart, removing him from meetings, failing to respond to Mr.
19 Mitchell's questions and inquiries, back-filling and/or eliminating his position upon his return
20 from medical leave, and ultimately wrongfully terminating him.

21 In addition, Mr. Mitchell's pension was significantly impacted.

22 UC Davis' actions against Mr. Mitchell caused, and continue to cause, Mr. Mitchell to
23 suffer significant emotional distress. Mr. Mitchell experiences shame, embarrassment,
24 insecurities, depression, lethargy, sleeplessness, weight gain, as a result of UC Davis
25 actions. Mr. Mitchell intends to seek damages from UC Davis under the Fair Employment
26 and Housing Act ("FEHA") The seriousness of these claims places UC Davis at an elevated
27 risk of liability for monetary damages, including punitive damages.

1 VERIFICATION

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

6 On March 18, 2025, I declare under penalty of perjury under the laws of the State of
7 California that the foregoing is true and correct.

8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
Walnut Creek, CA

EXHIBIT B



Civil Rights Department

651 Bannan Street, Suite 200 | Sacramento | CA | 95811
1-800-884-1684 (voice) | 1-800-700-2320 (TTY) | California's Relay Service at 711
calcivilrights.ca.gov | contact.center@calcivilrights.ca.gov

March 18, 2025

Shelley Molineaux
1148 Alpine Rd., Suite 201
Walnut Creek, CA 94596

RE: **Notice to Complainant's Attorney**
CRD Matter Number: 202503-28591719
Right to Sue: Brooks / The Regents of the University of California, dba UC Davis
Health

Dear Shelley Molineaux:

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

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

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

Sincerely,

Civil Rights Department



Civil Rights Department

KEVIN KISH, DIRECTOR

651 Bannan Street, Suite 200 | Sacramento | CA | 95811
1-800-884-1684 (voice) | 1-800-700-2320 (TTY) | California's Relay Service at 711
calcivilrights.ca.gov | contact.center@calcivilrights.ca.gov

March 18, 2025

RE: Notice of Filing of Discrimination Complaint

CRD Matter Number: 202503-28591719

Right to Sue: Brooks / The Regents of the University of California, dba UC Davis Health

To All Respondent(s):

Enclosed is a copy of a complaint of discrimination that has been filed with the Civil Rights Department (CRD) in accordance with Government Code section 12960. This constitutes service of the complaint pursuant to Government Code section 12962. The complainant has requested an authorization to file a lawsuit. A copy of the Notice of Case Closure and Right to Sue is enclosed for your records.

Please refer to the attached complaint for a list of all respondent(s) and their contact information.

No response to CRD is requested or required.

Sincerely,

Civil Rights Department



Civil Rights Department

651 Bannan Street, Suite 200 | Sacramento | CA | 95811
1-800-884-1684 (voice) | 1-800-700-2320 (TTY) | California's Relay Service at 711
calcivilrights.ca.gov | contact.center@calcivilrights.ca.gov

March 18, 2025

David Brooks
[REDACTED]
[REDACTED]

RE: Notice of Case Closure and Right to Sue

CRD Matter Number: 202503-28591719

Right to Sue: Brooks / The Regents of the University of California, dba UC Davis Health

Dear David Brooks:

This letter informs you that the above-referenced complaint filed with the Civil Rights Department (CRD) has been closed effective March 18, 2025 because an immediate Right to Sue notice was requested.

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

After receiving a Right-to-Sue notice from CRD, you may have the right to file your complaint with a local government agency that enforces employment anti-discrimination laws if one exists in your area that is authorized to accept your complaint. If you decide to file with a local agency, you must file before the deadline for filing a lawsuit that is on your Right-to-Sue notice. Filing your complaint with a local agency does not prevent you from also filing a lawsuit in court.

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

Sincerely,

Civil Rights Department

1 **COMPLAINT OF EMPLOYMENT DISCRIMINATION**
2 **BEFORE THE STATE OF CALIFORNIA**
3 **Civil Rights Department**
4 **Under the California Fair Employment and Housing Act**
5 **(Gov. Code, § 12900 et seq.)**

6 **In the Matter of the Complaint of**

7 David Brooks

CRD No. 202503-28591719

8 Complainant,

9 vs.

10 The Regents of the University of California, dba UC
11 Davis Health
12 2315 Stockton Blvd.
13 Sacramento, CA 95817

14 Respondents

15
16 **1. Respondent The Regents of the University of California, dba UC Davis Health is an employer** subject to suit under the California Fair Employment and Housing Act (FEHA) (Gov. Code, § 12900 et seq.).

17 **2. Complainant David Brooks**, resides in the City of [REDACTED], State of **CA**.

18 **3. Complainant alleges that on or about October 27, 2022**, respondent took the following adverse actions:

19 **Complainant was harassed** because of complainant's age (40 and over), other.

20 **Complainant was discriminated against** because of complainant's age (40 and over), other and as a result of the discrimination was terminated, other, denied work opportunities or assignments.

21 **Complainant experienced retaliation** because complainant reported or resisted any form of discrimination or harassment and as a result was terminated, other, denied work opportunities or assignments.

1 **Additional Complaint Details:** Plaintiff David Brooks is a 64-year-old Caucasian male who
2 began working for UC Davis as a Construction Superintendent/Project Manager on May 1,
2000, and later promoted to a Supervisor, until his wrongful termination on October 27,
2022.

3 Mr. Brooks utilized his expertise, with over 35 years in the construction industry, to
4 manage specific construction projects, earning accolades from multiple divisions and
5 department leaders. Mr. Brooks managed over \$500 million dollars of construction projects,
6 receiving a Certificate of Achievement for Excellence in Teamwork/Collaboration from the
7 CEO of UC Davis and Dean of the School of Medicine. Therefore, Mr. Brooks was an
8 exceptional employee for 22 years with Defendant as he received excellent performance
9 ratings in the categories of Far Exceeded, Fully Achieved, and Expectations Met, prior to
10 new management.

11 The following discrimination occurred when UC Davis discriminated against Mr.
12 Brooks on the basis of his age and time spent working for UC Davis.

13 On or around July of 2021, Jason Nietupski (“Nietupski”) was hired as the Executive
14 Director of Facilities, Planning and Development.

15 On or around April of 2022, Mr. Brooks’ former supervisor, Samara Lull (“Lull”)
16 revealed to him that the new Executive Director of Planning and Development, and Ms.
17 Lull’s manager, Mr. Nietupski said, “He just needs to retire,” about Mr. Brooks.

18 On April 28, 2022, Ms. Lull was terminated and mentioned to Mr. Brooks, “The
19 writing is on the wall for you too I’m afraid.”

20 On May 11, 2022, Mr. Brooks was called into the Directors Office with Mr. Nietupski
21 and Vicky Vicente (“Vicente”), Campus Architect & Director of Compliance, Interim of
22 Director of Capital Projects present, and was removed from a high-profile seismic
23 construction project that presented with a lot of challenges. Mr. Brooks was given a vague
24 answer as to why he was being removed, though he was told it was not punitive, and that
25 UC Davis was changing management and oversight of the seismic projects. Mr. Brooks was
26 not assigned to a new project at this meeting and was told he would receive a new
27 assignment later.

28 On or around May of 2022, Mr. Brooks emailed Ms. Vicente and inquired who his
supervisor would be now that Ms. Lull was no longer with UC Davis. Mr. Brooks never
received a response from Ms. Vincente or UC Davis informing him who his new supervisor
would be going forward.

Approximately four weeks later, Mr. Brooks received his next assignment, however
he realized it was not what his position description had outlined, it was an administrative
assignment closing out lingering projects, up to five years old, with outstanding contract
payments, and open purchase orders (some that lacked funds to pay), from former project
managers who had left UC Davis. Even though Mr. Brooks felt that this was a waste of his
experience and talent, he accepted the tasks and completed them without complaint. Mr.
Brooks’ new supervisor, Ms. Vicente, did not discuss the changed job duties expectations,
performance expectations, guidance for success or metrics for this new assignment.

On June 9, 2022, Mr. Brooks received a performance review by Ms. Vicente, who
was now his supervisor without notice and was one of the newest Managers in the
department, who had only been with UC Davis for three months, since February of 2022.
The correct process for an annual review was not followed, as per procedure Mr. Brooks’
annual review period was May 1, 2021, through April 30, 2022. Because Mr. Brooks’ review

1 period ended on April 30, 2022, and his actual supervisor Ms. Lull was terminated April 28,
2 2022, it was factual that Ms. Vicente had no historical or supervisory knowledge of Mr.
3 Brooks' performance at the time of his review.

4 In addition, and per procedure the performance review is to follow the following
5 steps: employee creates a self-evaluation and proposed goals, supervisor then reviews the
6 employee self-evaluation and proposed goals and completes the appraisal, an overall rating
7 is then entered by supervisor, the employee and supervisor meet, the appraisal is then
8 released to employee, and finally the employee reviews and acknowledges the appraisal.

9 However, on June 9, 2022, Ms. Vicente sent Mr. Brooks an email at 8:35 p.m.
10 saying, "Please review and acknowledge by June 10." The official date that performance
11 reviews were due in the system was June 10, 2022, which gave Mr. Brooks one day to
12 review and meet with Ms. Vicente. Upon review, and for the first time in 22 years of
13 employment Mr. Brooks received a "Some Expectations Met" rating after receiving only
14 "Exceeds Expectations" and "Fully Meets Expectations" at all times prior. Mr. Brooks felt that
15 UC Davis did not consider his accomplishments, which he outlined in his self-evaluation, or
16 provide timely and proactive feedback about areas of improvement needed during the
17 review period. In addition, Mr. Brooks felt that the new management used his review to
18 discriminate against a senior employee, his age, and time spent working for UC Davis.

19 It was typical performance review procedure and policy for the supervisor and the
20 employee to share responsibility for ongoing, timely and productive communication
21 throughout the year. Supervisors must clearly communicate goals and objectives,
22 competency expectations and performance measures. The performance appraisal process
23 is an important form of communication between the supervisor and employee, therefore,
24 being as Mr. Brooks' supervisor had only been employed with UC Davis for three months
25 prior to conducting his performance review, none of this important communication would
26 have time to take place effectively. Mr. Brooks felt it was clear that his self-evaluation and
27 proposed goals were not read or considered in Ms. Vincente's evaluation. Ms. Vicente never
28 met with Mr. Brooks and paid no regard to his concern about the poor evaluation rating,
which was not reflective of the successes Mr. Brooks had performed over the review period
and caused financial harm.

On June 10, 2022, Mr. Brooks had an update meeting, regarding assignments,
scheduled with Ms. Vicente. At this meeting, Ms. Vicente asked Mr. Brooks to sign the
review. Mr. Brooks asked if this update meeting was his "performance review," to which Ms.
Vicente responded that they could "make it if you want." An official "review" meeting was
never scheduled. Mr. Brooks responded that he would not be signing the review. Ms.
Vicente then proceeded with the update meeting, which at that time assigned Mr. Brooks an
additional twenty-five projects to close out.

On June 12, 2022, Mr. Brooks filed his First Complaint ("Complaint #1") for a
performance management appeal for the inaccuracies in the creation of his performance
review which caused him financial harm. This Complaint #1 took several weeks to review
and ultimately was dismissed.

During the performance management appeal, HR assigned several reviewers that
lacked communication or guidance, which contributed to continued discrimination against
Mr. Brooks. The reviewers assigned to this case did not respond to Mr. Brooks at times and
engaged in confusing and lengthy back-and-forth conversations to get answers. The
reviewers did not give impartial reviews nor followed policy on several instances.

1 On July 20, 2022, Mr. Brooks Complaint #1 was officially denied after a rebuttal to
2 his complaint was written by Mr. Nietupski and a meeting with the reviewer. At the meeting
3 Mr. Nietupski did not attend as scheduled, instead Mr. Nietupski assigned a manager from a
4 different area within the division who had no supervisory oversight of Mr. Brooks and no
5 insight into Mr. Brooks' work, to attend the meeting.

6 On July 28, 2022, Mr. Brooks then requested a Step II appeal.

7 On September 27, 2022, Mr. Brooks received a notice of intent to terminate. At the
8 time of receiving this notice, Mr. Brooks Step II appeal process was not complete.

9 On September 27, 2022, Mr. Brooks requested a Skelly review for the notice of intent
10 to terminate, per the options given to him.

11 On October 3, 2022, Mr. Brooks emailed Ms. Vicente about health benefits,
12 retirement, voluntary separation, and severance as Mr. Brooks held the health benefits for
13 his family, was nearing retirement and needed to understand how this could affect a
14 possible re-hire. All questions his supervisor should have guided him on. Ms. Vicente
15 responded by directing Mr. Brooks to contact Employee Labor Relations ("ELR"). Mr. Brooks
16 then inquired with ELR about voluntary separation and a severance package. However, UC
17 Davis did not follow up timely with Mr. Brooks' emails, nor did UC Davis answer his
18 questions and concerns about the impending notice of intent to terminate and how a
19 termination would affect his retirement, obtaining another position within UC Davis, and his
20 benefits.

21 On October 3, 2022, after asking Employee Labor Relations ("ELR") his questions,
22 Mr. Brooks received a response of, "I will get back to you."

23 On October 7, 2022, the Employee Labor Relations directed Mr. Brooks to speak
24 with his Skelly reviewer about his questions.

25 On October 10, 2022, Mr. Brooks attended his Skelly review, and the reviewer said
26 he was not the person to ask as per directed by ELR.

27 On October 17, 2022, the Skelly reviewer agreed with UC Davis' discipline action.

28 On October 27, 2022, Mr. Brooks received his termination letter. Mr. Brooks was
advised by ELR to file a Second Complaint for retaliation to continue to push for a
severance package as his Step II appeal from Complaint #1 had not been resolved before
UC Davis had issued this termination letter, as well as his questions about voluntary
separation and severance. This complaint was filed on November 28, 2022 ("Complaint #
2").

In addition, Mr. Brooks did not receive 30 days of additional pay per UC Davis policy
upon termination. There is 60 days in lieu of notice policy. Mr. Brooks was only paid for 30
days. In addition, Mr. Brooks did not receive his salary and vacation pay upon his
termination, instead it followed in November of 2022. In this case UC Davis did not follow
California Labor Law regarding prompt payment.

For months, between October 2022 to October 2023, Mr. Brooks tried to garner a
severance package and change his impending termination to a voluntary separation, in an
effort to seek employment without a termination on his record. However, UC Davis and their
ELR team continued to fail Mr. Brooks by offering a complete lack of support and timely
responses. The ELR representative that Mr. Brooks spoke too, indicated that she would
make sure Complaint #2 would be handled timely as she acknowledged the lack of timely
responses. Unfortunately, this was the last he heard from her. Per policy, Mr. Brooks is
eligible for six months' severance based on his years of service upon voluntary separation

1 from UC Davis. Instead, the ELR department offered Mr. Brooks two months' severance with
2 a change from termination to separation. Mr. Brooks' once again asked for 6 months per UC
Davis Policy.

3 On October 31, 2022, Mr. Brooks' Step II appeal was denied from Complaint #1.

4 On November 28, 2022, Mr. Brooks filed his Second Complaint ("Complaint #2") of
retaliation that ended in termination.

5 On March 16, 2023, Mr. Brooks' Complaint #2 was denied.

6 On April 18, 2023, Mr. Brooks requested a Step II appeal for Complaint #2.

7 On July 26, 2023, Mr. Brooks was offered a separation agreement and two months'
salary a second time.

8 On September 28, 2023, Mr. Brooks asked UC Davis for a draft of the separation
agreement.

9 On October 21, 2023, Mr. Brooks filed a Department of Industrial Relations ("DIR")
claim with the Labor Commissioner's Office as UC Davis did not pay out Mr. Brooks salary
and vacation upon his termination. In fact, his final paycheck was received four days after
his termination and his vacation pay was received twenty days after termination.

10 On October 25, 2023, Mr. Brooks again asked UC Davis for a draft of the separation
agreement.

11 On October 30, 2023, Employee Labor Relations responded that they would have
the draft settlement to Mr. Brooks by the end of the week for his review. However, this was
Mr. Brooks' last correspondence from UC Davis. Mr. Brooks never heard from ELR or UC
Davis after this date, nor was his Step II appeal for Complaint #2 completed.

12 On information and belief, Mr. Nietupski eliminated senior staff members as he
convinced executive leadership at UC Davis that the senior staff members were the problem
with construction and development at UC Davis.

13 On information and belief, multiple senior staff members were terminated under the
pretense of "poor performance."

14 Up until UC Davis hiring new management, Mr. Brooks had never received a
disciplinary write-up, never been given poor scores on his performance reviews, was a well-
regarded and valued employee, earning positive performance reviews, and the status of Far
Exceeded, Fully Achieved, and Expectations Met, prior to new management at all times. Mr.
Brooks had been a respected employee for the past twenty-two years working for
18 Defendant.

19 Mr. Brooks had been wrongfully terminated at the age of 62, as he was forced to
retire early, but had planned to work until he was 65 years of age before retiring. Because
he retired early, his pension is 25-30% less than he would have received had he retired at
20 65 years of age, like he planned to do.

21 In violation of Cal. Gov. Code §12940, Plaintiff was discriminated against based on
age and disability. Plaintiff is informed and believes that other co-workers of younger age
22 have been given opportunities for promotion and advancement as well as his previous
position.

23 On information and belief, UC Davis failed to investigate Mr. Brooks' reports,
concerns, and complaints. Instead, UC Davis terminated Mr. Brooks.

24 UC Davis retaliated against Mr. Brooks by removing Mr. Brooks from construction projects,
giving him a poor performance review without good or substantial reason, removing staff
25 from under him without notice or reason, failing to inform Mr. Brooks of who his direct

1 supervisor was, never discussing any performance issues nor providing a serious letter of
2 concern before termination, failing to respond to Mr. Brooks' questions and inquiries, and
ultimately wrongfully terminating him.

3 UC Davis' actions against Mr. Brooks caused, and continue to cause, Mr. Brooks to
4 suffer significant emotional distress. Mr. Brooks experiences lack of confidence,
5 disappointment, anger, shame, embarrassment, insecurities, depression, sleeplessness,
6 high blood pressure, as a result of UC Davis' actions. Mr. Brooks intends to seek damages
7 from UC Davis under the Fair Employment and Housing Act ("FEHA") The seriousness of
8 these claims places UC Davis at an elevated risk of liability for monetary damages, including
9 punitive damages.
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

1 VERIFICATION

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

6 On March 18, 2025, I declare under penalty of perjury under the laws of the State of
7 California that the foregoing is true and correct.

8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
Walnut Creek, CA