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8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **IN AND FOR THE COUNTY OF PLACER**

11 MEGAN YAWS,
12 Plaintiff,
13 vs.
14 COUNTY OF PLACER; PLACER COUNTY
SHERIFF'S DEPARTMENT, a government
15 entity employer; and DOES 1-25, inclusive,
16 Defendants.
17
18
19

Case No. S-CV-0042328

**DEFENDANT COUNTY OF PLACER'S
TRIAL BRIEF**

Complaint filed: December 31, 2018
Trial Date: June 21, 2021

20
21 Defendant County of Placer ("County") respectfully submits this Trial Brief.

22 **I. INTRODUCTION**

23 This lawsuit arises from Plaintiff's employment and termination therefrom with the County.
24 Plaintiff alleges eight causes of action for 1) violation of California Labor Code section 432.7, 2)
25 disability discrimination in violation of Cal. Gov. Code section 12940(a), 3) failure to accommodate
26 in violation of Gov. Code section 12940(m), 4) failure to engage in an interactive process in violation
27 of Gov. Code section 12940(n), 5) retaliation for Plaintiff's alleged reporting of disability
28 discrimination and sexual harassment in violation of Gov. Code section 12940(h), 6) failure to prevent

1 disability discrimination in violation of Gov. Code section 12940(k), 7) wrongful termination of
2 public policy, and 8) declaratory relief.

3 **II. STATEMENT OF FACTS**

4 After starting her career as a Correctional Officer for the County of El Dorado in 2005, Ms.
5 Yaws was hired by Placer County in 2014 to work as a Correctional Officer II for the Placer County
6 Sheriff's Office. Ms. Yaws promoted to Correctional Sergeant on April 30, 2016. Ms. Yaws was
7 placed on administrative leave on May 30, 2017. Ms. Yaws was terminated from the County effective
8 on January 29, 2018.

9 On April 21, 2018, Ms. Yaws filed an appeal with the Employment Development Department
10 regarding an EDD decision on her termination. Ms. Yaws dismissed that appeal prior to a hearing.
11 On May 1, 2018, Ms. Yaws filed a complaint with the DFEH alleging sex/gender discrimination,
12 disability discrimination, sexual harassment by Sgt. Brandon Bean and Lt. Alfredo Guitron, and
13 retaliation for reporting the same. The DFEH Complaint was immediately closed upon Ms. Yaws'
14 immediate request to sue. Ms. Yaws also appealed her termination through Placer County's Civil
15 Service Commission. Ms. Yaws voluntarily dismissed that appeal on October 13, 2018.

16 PLAINTIFF'S DISABILITY AND ACCOMMODATIONS

17 In July 2016, Ms. Yaws sustained an injury to her shoulder as a result of a work-place incident.
18 Prior to coming back to work, Ms. Yaws provided a doctor's note to the PCSO's HR personnel. Ms.
19 Yaws was directed to draft a Modified Duty Accommodations form which she completed including
20 requesting specific accommodations. Her direct supervisor, Lt. John Savage, conferred with PCSO
21 and County HR, his co-lieutenant Andrew Scott, and then Cpt. Hutchinson to determine if Ms. Yaws'
22 requested accommodations could work for her position. It was determined that Ms. Yaws' requested
23 accommodation could be granted. Due to working opposite schedules, Lt. Scott, through the authority
24 of his office, delegated a physical meeting and review of the Modified Duty Accommodations to Sgt.
25 Brandon Bean. Ms. Yaws admits that she met with Sgt. Bean to go over the work restrictions and the
26 accommodations. Ms. Yaws and Sgt. Bean executed the Modified Duty Accommodations form. Ms.
27 Yaws requested and approved accommodations were that she was to continue working as the desk
28 sergeant with "no inmate contact" and to "use an OIC if needed." "No inmate contact" requires that

1 Ms. Yaws is never in a position to be the primary physical defender of her person. Thus, Ms. Yaws
2 would require the presence of an additional officer to be in an area with unsecure inmates. An “OIC”
3 is an officer-in-charge and is widely understood to be another officer with the qualities and
4 capabilities to perform the role of the desk sergeant although they have a lesser rank. Ms. Yaws never
5 requested an accommodation which was denied by the County, nor did Ms. Yaws ever tell HR, Sgt.
6 Bean, or any member of the command staff that her requested accommodations were not working.

7 As Ms. Yaws’ original doctor’s and modified duty accommodations were set for a two-week
8 period, Ms. Yaws, Lt. Savage, and Sgt. Bean repeated the above-described interactive process
9 multiple times. Near the conclusion of each doctor’s note and accommodations agreement, Ms. Yaws
10 and Sgt. Bean would meet in person to review a new Modified Duty Accommodations agreement
11 wherein Ms. Yaws requested identical accommodations which were approved by Sgt. Bean and the
12 form signed by both Ms. Yaws and Sgt. Bean. Lt. Savage continued to monitor the agreements and
13 the delegated task to Sgt. Bean to continue to meet with Ms. Yaws. Ms. Yaws, by her own admission,
14 never requested an accommodation which was denied by the County, nor did Ms. Yaws ever tell HR,
15 Sgt. Bean, or any member of the command staff that her requested accommodations were not
16 working.

17 This process continued until approximately December 2016 when Ms. Yaws required surgery.
18 Ms. Yaws was on a leave of absence until approximately February 1, 2017 when she returned to work,
19 again on light duty. Prior to returning to work, Ms. Yaws followed the same interactive process by
20 providing a doctor’s note, drafting her requested accommodations, this time meeting with Lt. Savage,
21 having all of her requested accommodations approved and then the light duty agreement executed by
22 herself and Lt. Savage. Ms. Yaws’ new accommodations were nearly identical to her prior
23 accommodations with a few other restrictions per her doctor’s note.

24 Ms. Yaws was released to full duty on April 20, 2017. Through her extended light duty status,
25 Ms. Yaws admitted and was found to have violated her agreement on several occasions. She was
26 repeatedly warned to follow her restrictions and accommodations.

27 Ms. Yaws claims that her annual evaluation completed by Lt. Guitron was an adverse
28 employment action due to her disability because Lt. Guitron noted that she worked on modified duty

1 during most of the rating period. However, Lt. Guitron gave Ms. Yaws a “standard” rating. Lt. Guitron
2 also approved her for a salary merit increase which is the highest increase for which Ms. Yaws could
3 have qualified. Ms. Yaws communicated with several co-workers including her then significant other
4 Deputy Ashley Smentek regarding Lt. Guitron’s evaluations and stated that he was fair.

5 SEXUAL HARASSMENT

6 Ms. Yaws alleges that she reported sexual harassment in the workplace by Sgt. Bean and Lt.
7 Guitron. With regards to Sgt. Bean, Ms. Yaws alleges that she reported that Sgt. Bean stated to her
8 and another female subordinate to “eat a bowl of dicks” and “I’m going to rape you not for the sex
9 but for the power.” Ms. Yaws did not complain of any sexual harassment by Sgt. Bean until she filed
10 her DFEH complaint in May 2018. Ms. Yaws did not complain of any sexual harassment by Lt.
11 Guitron until June 2018 after Lt. Guitron had been assigned as the investigating lieutenant in her
12 internal affairs investigations. The County was notified of the complaint and allegations by Ms. Yaws’
13 then attorney, Chris Miller, via email. The County immediately removed Lt. Guitron from his role in
14 the investigation and assigned the IA to Lt. Kelly Leitzell and Lt. Andrew Scott.

15 TERMINATION

16 In May 2017, another sergeant was reviewing jail videos involving use of force incidents. The
17 sergeant came across an incident involving an inmate Beau Bangert where the sergeant felt that the
18 uses of force by jail staff was excessive and that the reports written or approved by Ms. Yaws did not
19 accurately reflect the use of force shown on the video. This started a chain of events where the incident
20 was reviewed by members of the command staff as well as uses of force instructors both employed
21 and privately retained by the County. It was then determined that additional videos of use of force
22 incidents and reports would be reviewed. The outcome of the review was the discovery of multiple
23 incidents wherein excessive force was used on inmates while Ms. Yaws was the shift supervisor and
24 that the reports written by the officers and approved by Ms. Yaws did not accurately reflect the uses
25 of force. The PCSO referred the incidents to the District Attorney’s Office which conducted a criminal
26 investigation into the conduct of Ms. Yaws, former deputy Robert Madden, and former correctional
27 officer Jeffrey Villanueva. The PCSO conducted its own internal affairs investigations into Ms. Yaws,
28 Madden, and Villanueva for determination administrative discipline.

1 The PCSO IA into Ms. Yaws' conduct was led by Lt. Leitzell and assisted by Lt. Scott (after
2 Lt. Guitron's dismissal from the assignment). The investigation included a review of videos and
3 reports of five separate use of force incidents, interviews of fourteen witnesses and participants to the
4 incidents, a review of documents provided by the DA's Office in connection to its investigations,
5 Yaws' training records, light duty paperwork, and various PCSO policies. Lt. Leitzell then drafted an
6 Investigative Narrative Memo directed to Cpt. Dave Powers. Cpt. Powers reviewed the Memo and
7 the entire file of exhibits in order to determine whether Ms. Yaws violated various portions of the
8 County Code or PCSO policies and to recommend a particular disciplinary action. Based upon the
9 evidence, Cpt. Powers found multiple sustained violations with respect to each of the five use of force
10 events. He recommended termination. Cpt. Powers presented a memorandum of his Findings and
11 Recommendations to Undersheriff Woo. US Woo independently reviewed the entire IA file including
12 all videos, exhibits, and memoranda. Based upon his review, US Woo also concluded that Ms. Yaws'
13 multiple conduct violations warranted termination. US Woo's recommendation was then sent to
14 Sheriff Bell who independently reviewed the entire IA file and determined that Ms. Yaws should be
15 terminated. Pursuant to the County Code, Sheriff Bell then issued a Notice of Proposed Discipline
16 (NOP) outlining the basis for the discipline and included the entire IA file to Ms. Yaws. Ms. Yaws
17 then participated in a Skelly hearing. Sheriff Bell then issued an Order of Discipline (OD) which
18 resulted in the termination of Ms. Yaws.

19 While the OD contains all the reasons for Ms. Yaws' termination, Ms. Yaws was terminated
20 for the following summary of reasons: The reports of the Incidents, either approved or written by Ms.
21 Yaws, contained multiple inconsistencies in the descriptions of uses of forces in the various incidents
22 from the actions seen in the videos. Ms. Yaws consistently omitted serious and excessive uses of force
23 to make the incidents appear reasonable in the report. Ms. Yaws, as the supervisor of her squad, did
24 not take the appropriate action to confront the excessive uses of force by her staff or to relay the issue
25 up the chain of command. Ms. Yaws was shown on video to be in the presence of a use of force and
26 visibly neglected to supervise the incident by turning away from the action to continue a conversation
27 with another officer. Ms. Yaws failed to utilize the video surveillance system in multiple occasions
28 to review use of force incidents prior to approving Incident Reports or responding to Kits which is a

1 critical role of the desk sergeant and something that she was fully capable doing with her
2 modifications. Neither Ms. Yaws' disability nor her restrictions and accommodations prevented Ms.
3 Yaws from properly performing any of the duties with which it was determined that she breached
4 County Code and policy.

5 The District Attorney's ultimate decision to criminally charge Ms. Yaws, Madden, and
6 Villanueva was made independently of the Sheriff's Office. The DA's Office did not seek out any
7 input of recommendation from the SO nor did the SO provide any input or recommendations to the
8 DA's Office. Plaintiff has alleged that she was terminated because she was arrested and has pointed
9 to language in the NOP and OD in support of such a contention. In the first paragraph of the "Reason
10 for the Action" section of the NOP and OD, Sheriff Bell states, "A video audit of use of force incidents
11 at the Auburn Main was initiated in May 2017. During the video audit, it was discovered that between
12 April 2016 and May 2017 you were the shift supervisor during at least five (5) incidents involving
13 the improper use of force by members of your squad. These following incidents were uncovered and
14 are now the subject of a criminal complaint." Plaintiff points to the final phrase which acknowledges
15 that the DA is investigating those incidents. The OD does not ever state that Ms. Yaws was terminated
16 for her arrest or criminal charges. An acknowledgment of other proceedings in a paragraph identifying
17 the incidents provides clarity to the reader as to which incidents are being discussed. Further, there is
18 no mention of Ms. Yaws' arrest or any other mention of any criminal investigation in the rest of the
19 OD. Rather, the OD outlines Ms. Yaws' breaches of County Code and SO policy – not of the
20 California penal code.

21 Furthermore, Madden and Villanueva were convicted of a combined four felonies for their
22 actions during three of the five events cited in the OD. Thus, Ms. Yaws was the active supervisor
23 during the commission of four separate felonies for which she failed to adequately identify and report
24 to her superiors.

25 III. LEGAL AUTHORITIES

26 1) Violation of California Labor Code Section 432.7
27 LC § 432.7(a)(1) states that employers, including public entities shall not utilize "as a factor in
28 determining any condition of employment including hiring, promotion, termination, or any

1 apprenticeship training program or any other training program leading to employment, any record of
2 arrest or detention that did not result in conviction....” LC § 432.7 does not apply to persons seeking
3 employment or persons already employed as peace officers or persons seeking employment for
4 positions in the Department of Justice or other criminal justice agencies as defined in Section 13101
5 of the Penal Code.

6 2) Disability Discrimination in Violation of Cal. Gov. Code section 12940(a)

7 A claim for discrimination brought under FEHA is subject to the three-stage burden-shifting
8 analysis established by McDonnell Douglas Corp. v. Green (1973) 411 U.S. 792. Guz v. Bechtel
9 Nat’l, Inc. (2000) 24 Cal.4th 317, 355. First, plaintiff must establish a prima facie case of disability
10 discrimination. In response to a prima facie case of disability discrimination, defendant must offer
11 legitimate, non-discriminatory reasons for the adverse employment action. If the employer is able to
12 do so, the plaintiff must produce “substantial evidence that the employer’s stated reasons were untrue
13 or pretextual, or that the employer acted with discriminatory animus, such that a reasonable trier of
14 fact could conclude that the employer engaged in intentional discrimination or other unlawful action.”
15 Cucuzza v. City of Santa Clara (2002) 104 Cal.App.4th 1031, 1038. “[A]n employer is entitled to
16 summary judgment if, considering the employer’s innocent explanation for its actions, the evidence
17 as a whole is insufficient to permit a rational inference that the employer’s actual motive was
18 discriminatory.” Guz v. Bechtel Nat’l, Inc., supra, 24 Cal.4th at 360-361.

19 3) Failure to Accommodate in Violation of Gov. Code section 12940(m)

20 In order to prove a prima facie case for a violation of Gov. Code section 12940(m), Plaintiff must
21 establish 1) the County was an employer; 2) Plaintiff was employed by the County as a Correctional
22 Sergeant; 3) Plaintiff had a disability; 4) the County knew of Plaintiff’s disability; 5) Plaintiff was
23 able to perform the essential duties of her current position or a vacant alternative position with a
24 reasonable accommodation for her disability; 6) the County failed to provide reasonable
25 accommodation for Plaintiff’s condition; 7) she was harmed, and 8) the County’s failure to provide a
26 reasonable accommodation was a substantial factor in causing Plaintiff’s harm. (see CACI 2541.)

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1 4) Failure to Engage in an Interactive Process in Violation of Gov. Code section 12940(n)

2 In order to prove a prima facie case for a violation of Gov. Code section 12940(n), Plaintiff
3 must establish: 1) she requested a reasonable accommodation for her shoulder disability so that she
4 could perform the essential job requirements, 2) she was willing to participate in an interactive process
5 to determine whether reasonable accommodations could be made, 3) the County failed to participate
6 in a timely, good-faith interactive process; 4) she was harmed, and 5) the County’s failure to engage
7 was a substantial factor in causing Plaintiff’s harm. (see CACI 2546.)

8 5) Retaliation for Plaintiff’s Alleged Reporting of Disability Discrimination and Sexual
9 Harassment in Violation of Gov. Code section 12940(h)

10 “[I]n order to establish a prima facie case of retaliation under the FEHA, a plaintiff must show
11 (1) he or she engaged in a ‘protected activity,’ (2) the employer subjected the employee to an adverse
12 employment action, and (3) a causal link existed between the protected activity and the employer’s
13 action. [Citations.]” *Yanowitz v. L’Oreal USA, Inc.* (2005) 36 Cal.4th 1028, 1130. Where a prima
14 facie case of retaliation is established, the burden shifts to the defendant to show a legitimate,
15 nonretaliatory reason for the adverse employment action. *Akers v. County of San Diego* (2002) 95
16 Cal.App.4th 1441, 1453. Defendant having met its burden of showing a legitimate, nonretaliatory
17 reason for the adverse employment action, the burden shifts back to plaintiff to submit evidence
18 showing that defendant’s proffered reasons were a pretext, and the adverse employment actions
19 suffered by plaintiff had retaliatory motives. Plaintiff must “demonstrate such weaknesses,
20 implausibilities, inconsistencies, incoherencies, or contradictions in the reasons offered by the
21 employer for the employment decision that a reasonable trier of fact could rationally find the reasons
22 not credible, and thereby infer the employer did not act for the stated nondiscriminatory purpose.”
23 *Morgan v. Regents of Univ. of Cal.* (2000) 88 Cal.App.4th 52, 75.

24 6) Failure to Prevent Disability Discrimination in Violation of Gov. Code Section 12940(k).

25 In order to prove a prima facie case for a violation of Gov. Code section 12940(k), Plaintiff
26 must establish: 1) Plaintiff was employed by the County, 2) Plaintiff was subjected to disability
27 discrimination and/or harassment; 3) the County failed to take all reasonable steps to prevent the
28 discrimination and/or retaliation; 4) Plaintiff was harmed and 5) the County’s failure to take all

1 reasonable steps to prevent discrimination and retaliation was a substantial factor in causing
2 Plaintiff's harm.

3 Dated: June 10, 2021

OFFICE OF THE PLACER COUNTY COUNSEL

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By: 

GREGORY WARNER
Attorney for Defendant COUNTY OF PLACER

DECLARATION OF PROOF OF SERVICE

Megan Yaws v. County of Placer, et al.
Placer County Superior Court Case No. SCV0042328

I, Shawna Harris, declare:

I am a citizen of the United States and am employed in the County of Placer. I am over the age of eighteen (18) years and not a party to the within-entitled action. My business address is 175 Fulweiler Avenue, Auburn, California. On June 10, 2021, I served the within document(s):

DEFENDANT COUNTY OF PLACER’S TRIAL BRIEF

BY U.S. MAIL: By placing a true copy thereof enclosed in a sealed envelope and placing it in a designated area for outgoing mail, addressed as set forth below. I am readily familiar with the practice of this office with respect to collection and processing of documents for mailing. On the same day that correspondence is placed for collection and mailing at Auburn, California, it is deposited in the ordinary course of business with the United States Postal Service in a sealed envelope with postage fully prepaid.

BY OVERNIGHT MAIL: By placing the document(s) listed above in a sealed envelope and depositing said envelope(s) with delivery fees paid or provided for, in a box or other facility maintained by Federal Express, addressed as set forth below.

BY ELECTRONIC SERVICE: Based on a court order or an agreement of the parties to accept electronic service, I caused the documents to be sent to the persons at the electronic service addresses as set forth below.

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I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on June 10, 2021, at Auburn, California.

Shawna Harris

Shawna Harris