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PFIZER INC., TARA PALESH,
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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

FRANK HAN, an individual,

Plaintiff,

vs.

PFIZER INC.; a Delaware corporation;
TARA PALESH, an individual; JEFF
SCOTT, an individual; ERIC
EICHINGER, an individual; and DOES
1 through 100, inclusive,

Defendants.

CASE NO.: 4:23-cv-03908

DATE: October 12, 2023

TIME: 1:00 p.m

CTRM: 4 - 3rd Floor

**DEFENDANT PFIZER INC.'S
NOTICE OF MOTION AND MOTION
TO DISMISS PLAINTIFF'S
COMPLAINT; MEMORANDUM OF
POINTS AND AUTHORITIES IN
SUPPORT**

[FED. R. CIV. P. 12(b)(6)]

*[Filed concurrently with Declaration in
support; and [Proposed] Order]*

State Court Complaint Filed: April 25, 2023
Removed: August 4, 2023

**TO THE HONORABLE COURT, PLAINTIFF, AND THEIR ATTORNEYS
OF RECORD:**

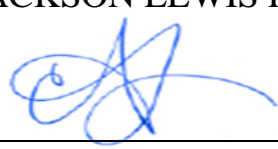
PLEASE TAKE NOTICE THAT on October 12, 2023, at 1:00 p.m. in Courtroom 4 of the above-entitled Court located at 1301 Clay Street, Oakland, CA 94612, and before the Honorable Donna M. Ryu, Defendant Pfizer Inc. will move to dismiss Plaintiff Frank Han's ("Plaintiff") second, third, fourth, fifth and seventh causes of action in their entirety and his eighth cause of action as against the Individual Defendants Palesh, Scott and Eichinger pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure.

Defendant's Motion is based on this Notice, the Memorandum of Points and Authorities, and the Declaration of Alison Lynch filed concurrently herewith, the pleadings and papers on file in this action, and upon such oral argument that may be heard at the time of hearing.

DATED: August 11, 2023

JACKSON LEWIS P.C.

By: _____


Alison L. Lynch
Donald E. English, Jr.
Parth P. Jani

Attorneys for Defendant
PFIZER INC., TARA PALESH,
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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

This is a retaliation claim by Plaintiff Frank Han against his former employer, Pfizer Inc., and three individuals including his former supervisor, Tara Palesh, his former manager, Jeff Scott, and human resources manager, Eric Eichinger (collectively “Individual Defendants”). Plaintiff claims he noticed what he believed were financial irregularities, that he reported these irregularities to Pfizer, and that as a result, he was retaliated against through negative performance reviews and ultimately, his employment termination.

Plaintiff has attempted to plead additional claims under the Fair Employment and Housing Act (“FEHA”) based on the same underlying conduct. This Court Should dismiss Plaintiff’s claims under the FEHA, including his second, third, fourth and seventh causes of action, because the Complaint fails to allege facts regarding any conduct by any defendant directed toward Plaintiff based on any category or conduct protected by the FEHA. The Court also should dismiss the fifth cause of action for intentional infliction of emotional distress because that claim is pre-empted by the Worker’s Compensation Act and in any event, the Complaint fails to state facts showing extreme or outrageous conduct in support of that claim. Finally, the Court should dismiss Plaintiff’s eighth cause of action for wrongful termination in violation of public policy against all Individual Defendants because this claim cannot be brought against individuals.

For these and all of the foregoing reasons, Plaintiff’s second, third, fourth, fifth and seventh causes of action should be dismissed in their entirety and his eighth cause of action as against the Individual Defendants pursuant to Rule 12(b)(6) of the Federal Rules¹ of Civil Procedure as outlined herein.

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¹ All further references to Rules are to the Federal Rules of Civil Procedure

II. RELEVANT FACTUAL ALLEGATIONS

Plaintiff was employed by Pfizer as the Director of Global Compliance – Analytics. Declaration of Alison Lynch, (“Lynch Dec.”), Exhibit A, ¶ 8. He received a positive performance review in August 2021. *Id.* at. ¶ 9. Several months later in November 2021, he “discovered” some information that he perceived as anti-corruption or financial compliance concerns; specifically, that Pfizer allegedly spent more money on engagements involving certain healthcare professionals in China than in any other country.² He raised these concerns to his supervisor, Defendant Palesh, and several other colleagues.³ *Id.* Then in January 2022, Defendant Palesh gave him a lower performance rating. *Id.* at ¶ 12.

In March 2022, Plaintiff had a one-on-one meeting with Defendant Palesh where she “screamed at [him] about [his] work.” *Id.* at ¶ 13. Around March 30, 2022, Plaintiff reported Defendant Palesh’s alleged “harassing and retaliatory treatment” to his next level manager, Defendant Scott. *Id.* at ¶ 15. On May 4, Defendant Palesh gave him additional negative performance feedback. Then in August 2022, Defendant Palesh gave him his lowest performance rating and a “Final Notice of Underperformance.” *Id.* at 18-19.

Plaintiff prepared a rebuttal letter to Defendant Palesh’s “unfair performance review” and again raised his anti-corruption concerns. *Id.* at ¶ 21. In September, Plaintiff met with Defendant Eichinger, Pfizer’s human resources manager. Defendant Eichinger broke down Plaintiff’s concerns regarding Pfizer’s compliance and Defendant Palesh’s criticism of Plaintiff’s performance after raising these concerns into three categories: “(1) employee relations issues between Plaintiff and [Defendant] Palesh; (2) performance review issues; and (3) business issues.” *Id.* at ¶ 22. Defendant Eichinger told Plaintiff that he (Eichinger) would investigate the employee relations issues (1). He told Plaintiff that Defendant Scott would investigate the performance review issues (2). And he told Plaintiff that Pfizer’s corporate investigations team would investigate the business issues (3). *Id.*

² As it is required to do, Pfizer accepts the allegations within the pleadings for purposes of this motion. However, as will be clear throughout this litigation, Pfizer adamantly denies any claims of wrongdoing.

³ Pfizer refers to its employees as “colleagues.”

Plaintiff spoke with someone from Pfizer’s corporate investigations team and was thereafter informed by Defendant Eichinger that “no further action has been deemed necessary” regarding Plaintiff’s business issues concerns (3). *Id.* at ¶ 24. Defendant Eichinger concluded his investigation of the employee relations issue between Plaintiff and Defendant Palesh in early October, but Plaintiff was not informed of the results of his investigation. *Id.* at ¶ 25. There are no facts alleged in the Complaint regarding any investigation by Defendant Scott of the performance review issues (2).

On October 22, 2022, Plaintiff allegedly “filed a report with the SEC. [He] reported the same fraud discussed [above] and the misrepresentation and corruption concerns he had repeatedly raised to the Defendants.” *Id.* at ¶ 27. Plaintiff does not allege that he informed his employer of the filing of a report with the SEC. Plaintiff’s employment was terminated on November 4, 2022. *Id.* at ¶ 29. He claims his employment termination was in retaliation for his raising his perceived anti-corruption compliance concerns.

III. LEGAL ARGUMENT

A. Motion to Dismiss Pursuant to Rule 12(b)(6)

A motion to dismiss under Rule 12(b)(6) tests the legal sufficiency of the claims stated in the complaint. *De La Cruz v. Tormey*, 582 F.2d 45, 48 (9th Cir. 1978); *C.B. v. Sonora Sch. Dist.*, 691 F. Supp. 2d 1123, 1128 (E.D. Cal. 2009). Dismissal is warranted under Rule 12(b)(6) where the complaint lacks a cognizable legal theory or where the complaint presents a cognizable legal theory yet fails to plead essential facts under that theory. *C.B.*, supra, 691 F. Supp. 2d at 1128. “A district court should grant a motion to dismiss if plaintiffs have not pled enough facts to state a claim to relief that is plausible on its face.” *Id.* at 1129 (citing *Williams ex rel. Tabiu v. Gerber Products Co.*, 523 F.3d 934, 938 (9th Cir. 2008)). “Factual allegations must be enough to raise a right to relief above the speculative level.” *Id.*

The pleading standard of Federal Rule of Civil Procedure Rule 8 does not require detailed factual allegations, “but it demands more than an unadorned, the-defendant-unlawfully-harmed-me accusation. A pleading that offers labels and conclusions or a

formulaic recitation of the elements of a cause of action will not do. Nor does a complaint suffice if it tenders *naked assertions devoid of further factual enhancement*.” *Ashcroft v. Iqbal*, 129 S. Ct. 1937, 1949 (2009) (emphasis added); *C.B.*, supra, at 1129 (citing *Bell Atl. Corp. v. Twombly*, 550 U.S. 544 at 570 (2007)). “To survive a motion to dismiss, a complaint must contain sufficient factual matter to state a facially plausible claim for relief.” *Krainski v. State of Nevada ex rel. Bd. of Regents*, 616 F.3d 963, 972 (9th Cir. 2010). In diversity jurisdiction cases, federal courts must apply the substantive state law of the forum state. *City of Orange v. United States Dist. Court*, 784 F.3d 520, 523–24 (9th Cir. 2015).

B. Plaintiff’s Second and Third Causes of Action for Hostile Work Environment under the FEHA Must be Dismissed Because There Are No Facts to Support a Harassment Claim Under the FEHA.

1. The FEHA Does Not Prohibit Harassment Based on Raising Financial Compliance Concerns

The FEHA prohibits harassment based on protected categories enumerated therein, including: “race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, reproductive health decision making, or veteran or military status” Cal. Gov. Code 12940(j)(1). It does not prohibit harassment based on raising perceived financial compliance concerns. The Complaint fails to state a claim for harassment under the FEHA and should be dismissed pursuant to Rule 12(b)(6).

2. There Are No Allegations of Severe or Pervasive Harassing Conduct Based on a Category Protected by the FEHA

To state a claim for harassment in the form of a hostile work environment under the FEHA, a plaintiff must plead and prove: (1) he was a member of a protected category under the FEHA; (2) he was subjected to unwelcome harassment; (3) the harassment was based on his status in the protected category; and (4) the harassment complained of was

1 sufficiently severe or pervasive so as to alter the conditions of her employment and create
 2 an abusive working environment. *Fisher v. San Pedro Peninsula Hosp.*, 214 Cal. App. 3d
 3 590, 608 (1989).

4 Under the FEHA, “harassing conduct takes place ‘outside the scope of necessary job
 5 performance, conduct presumably engaged in for personal gratification, because of
 6 meanness or bigotry, or for other personal motives.’ (*Reno v. Baird* 18 Cal.4th 640, 646
 7 (Cal. 1998)) ‘Thus, harassment focuses on situations in which the social environment of
 8 the workplace becomes intolerable because the harassment (whether verbal, physical, or
 9 visual) communicates an offensive message to the harassed employee.’ (*Roby v. McKesson*
 10 *Corp.*, 47 Cal.4th 686, 706 (2009))” *Serri v. Santa Clara University*, 226 Cal.App.4th 830,
 11 869 (2014). Claims for harassment generally cannot arise from conduct within the course
 12 and scope of employment, such as through performance reviews. *Janken v. GM Hughes*
 13 *Electronics* 46 Cal.App.4th 55, 65 (1996).

14 Plaintiff’s Complaint is devoid of any facts alleging unwelcome conduct directed at
 15 Plaintiff based on a category protected by the FEHA. Instead, Plaintiff alleges negative
 16 performance criticism (something within the normal course and scope of employment)
 17 based on his having complained about perceived financial or anti-corruption concerns. He
 18 also claims he was not informed about the results of the investigation of his complaint, and
 19 that his employment was ultimately terminated. This conduct cannot support a claim for
 20 harassment under the FEHA because it involves personnel management actions within the
 21 course of employment, *and* because it is not alleged to be directed at Plaintiff based on any
 22 category protected by the FEHA. *See, Janken, supra*, 46 Cal.App.4th at p. 65 (explaining
 23 personnel management actions, including “hiring and firing, job or project assignments,
 24 office or workstation assignments, promotion or demotion, performance evaluations, the
 25 provision of support, the assignment or nonassignment of supervisory functions” fall
 26 outside the purview of harassment and that the law protects “commonly necessary personal
 27 management actions” that might irritate or frustrate employees); *see also, Serri, supra*, 226
 28 Cal.App.4th at 871 (upholding grant of summary judgment on harassment claim when the

conduct complained of included decisions about who would attend meetings and how those meetings were conducted, which were not outside the course of employment).

Although Plaintiff claims Defendant Palesh “screamed” at him, the screaming was admittedly “about his work,” (Complaint ¶13) and not directed at him based on any FEHA protected category. It is thus, not the sort of conduct that supports a harassment claim under the FEHA. Plaintiff’s second and third causes of action for harassment under the FEHA should be dismissed.

C. Plaintiff’s Seventh Cause of Action for Retaliation Under the FEHA Must be Dismissed Because Plaintiff Did Not Engage in Protected Activity Under the FEHA

The FEHA prohibits an employer from retaliating against any person “because the person has opposed any practices **forbidden under this part** or because the person has filed a complaint, testified or assisted **in any proceeding under this part.**” Cal. Gov. Code § 12940(h) (emphasis added). In other words, the FEHA prohibits retaliation for complaining about practices that the FEHA forbids, including discrimination (Cal. Gov. Code § 12940 (a-d)), unlawful medical inquiries (e-f), reports of patient abuse (g), harassment based on a FEHA protected category (j), or failure to accommodate a disability or religious practice (m). *See gen.* Cal. Gov. Code § 12940. This includes complaining about conduct an employee reasonably believes may constitute discrimination under the FEHA. *Yanowitz v. L’Oreal USA, Inc.*, 36 Cal.4th 1028, 1047 (2005).

The FEHA does not regulate retaliation for reporting financial compliance concerns. Such conduct is completely unrelated to the sort of harassment and discrimination the FEHA prohibits, and there is thus no way an employee could reasonably believe said conduct violated the FEHA. *See, Jackson v. Permanente*, No. CV 18-08176-DSF (PLA), 2019 U.S. Dist. LEXIS 234232, at *12 (C.D. Cal. Jan. 8, 2019) (court did not find Plaintiff’s belief reasonable, given that reporting fraud is not remotely related to any of the characteristics protected by the FEHA.) Claims for retaliation for “whistleblowing” or raising concerns regarding compliance with laws other than the FEHA are properly brought

(as they are here) under Labor Code section 1102.5, which prohibits employers from retaliating against employees for disclosing information “to a person with authority over the employee or another employee who has the authority to investigate, discover, or correct the violation or noncompliance ... if the employee has reasonable cause to believe that the information discloses a violation of state or federal statute” Cal. Labor Code 1102.5. Plaintiff’s seventh cause of action for retaliation in violation of the FEHA must therefore be dismissed.

D. Plaintiff’s Fourth Cause of Action for Failure to Prevent, Investigate and Remedy Harassment or Retaliation Under the FEHA Must be Dismissed as Derivative of his Other Failed FEHA Claims.

Plaintiff’s claim for failure to prevent harassment and retaliation under the FEHA is derivative of and depends upon the success of his claims for harassment and retaliation. *Trujillo v. North County Transit Dist.* 63 Cal.App.4th 280 (1998) (finding that plaintiff cannot prevail on a failure-to-prevent theory unless she can show actionable discrimination, harassment, or retaliation actually occurred.). Because Plaintiff’s claims for harassment and retaliation under the FEHA fail as outlined above, his fourth cause of action for failure to prevent harassment and retaliation under the FEHA therefore must be dismissed as well. *Jumaane v. City of L.A.*, 241 Cal. App.4th 1390, 1410 (2015) (court found that since the evidence of events were insufficient to establish a *prima facie* claim of discrimination, harassment or retaliation the failure to prevent discrimination, retaliation and harassment also failed).

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E. Plaintiff’s Fifth Cause of Action for Intentional Infliction of Emotional Distress Must be Dismissed Because It is Pre-empted by the Worker’s Compensation Act and the Complaint Fails to Describe Extreme or Outrageous Conduct.

1. Plaintiff’s Claim for IIED Is Pre-empted By the Exclusive Remedies Provision Of California’s Workers’ Compensation Act.

In the employment context, claims for IIED are generally pre-empted by the exclusive remedy provisions of California Workers’ Compensation Act. See, Labor Code § 3600, et seq.; *Fermino v. Fedco, Inc.*, 7 Cal.4th 701, 712-713 (1994); *Livitsanos v. Superior Court*, 2 Cal.4th 744, 754-755 (1992). In particular, the workers’ compensation exclusivity rule applies when the risks resulting in the alleged injury were encompassed within the “compensation bargain.” *Singh v. Southland Stone, U.S.A., Inc.*, 186 Cal. App.4th 338, 366 (2010) (“Singh”). “An employer’s intentional misconduct in connection with actions that are a normal part of the employment relationship, such as demotions and criticism of work practices, resulting in emotional injury is considered to be encompassed within the compensation bargain, even if the misconduct could be characterized as ‘manifestly unfair, outrageous, harassment, or intended to cause emotional disturbance’.” *Id.* at 367, citing *Cole v. Fair Oaks Fire Protection Dist.*, 43 Cal.3d 148, 154 (1987) (“Cole”).

In *Cole*, the plaintiff worked as a fire captain for many years and alleged that his employer and supervisors engaged in a lengthy and brutal campaign of harassment and ridicule intended to punish plaintiff for his union activities. The defendants (allegedly) publicly stripped plaintiff of his rank, made false accusations of dishonesty against him, assigned him to menial duties, and tried to force him to retire through a personnel review process that the court characterized as a “kangaroo court.” Cole subsequently suffered a totally disabling stroke due to his high blood pressure. Despite the allegedly “outrageous” character of this conduct, the California Supreme Court held that workers’ compensation provided plaintiff’s exclusive remedy. *Cole*, 43 Cal. 3d at 160; *see also, Miklosy v. Regents*

1 of the University of California, 44 Cal.4th 876, 902 (2008) (sustaining defendants'
 2 demurrer to IIED claim because the “alleged wrongful conduct, however, occurred at the
 3 worksite, in the normal course of the employer-employee relationship, and therefore
 4 workers' compensation is plaintiffs' exclusive remedy for any injury that may have
 5 resulted.”).

6 Additionally, in *Singh, supra*, despite evidence that the plaintiff's supervisor
 7 “berated and humiliated” him, criticized his job performance, and insulted him with
 8 profanities on a regular basis, the court found plaintiff's claim for intentional infliction of
 9 emotional distress was pre-empted by the workers' compensation laws because “the
 10 misconduct occurred in the workplace and involved criticisms of performance or other
 11 conflicts arising from employment.” *Singh*, 186 Cal. App. 4th at 367-368.

12 Here, like in *Singh*, Plaintiff alleges that Defendant Palesh unfairly criticized his
 13 performance and unjustifiably gave him lower performance reviews. Lynch Dec. Exh. A
 14 ¶¶ 12, and 17-19. He also claims she “screamed at [him] about [his] work.” *Id.* ¶ 13. He
 15 alleges that this conduct was “extreme, outrageous and beyond all possible bounds of
 16 human decency” and caused him to suffer emotional distress. *Id.* at ¶¶ 60-62. It is clear
 17 from Plaintiff's allegations that the alleged conduct, and any alleged injury that may have
 18 resulted from such conduct, arose from the workplace in the normal course of the
 19 employment relationship. Plaintiff's IIED claim is therefore pre-empted by California's
 20 Worker's Compensation Act and should be dismissed accordingly.

21 2. Even If Plaintiff's IIED Claim Is Not Pre-empted, Plaintiff's Complaint
 22 Still Fails to State Facts Sufficient to Constitute a Claim for IIED
 23 Because the Alleged Conduct is not Extreme or Outrageous.

24 Plaintiff's Complaint does not allege “extreme or outrageous” conduct necessary to
 25 support a claim for IIED. California's courts have consistently held that in the employment
 26 context, management personnel actions, including criticism of an employee's performance
 27 or workplace behavior, employee discipline, suspension, and even termination of
 28 employment are not acts of “outrageous” conduct and will not support a claim for IIED.

1 *Janken, supra*, 46 Cal.App.4th 55, 65, 79-80; *see also Cole, supra*, 43 Cal.3d at 160
 2 (actions which are a normal part of the employment relationship cannot be characterized
 3 as outrageous behavior); *Schneider v. TRW, Inc.*, 938 F2d 986 (9th Cir. 1991) (yelling and
 4 screaming at employee while criticizing work is not, by itself, outrageous conduct); and
 5 *Crain v. Burroughs Corp.*, 560 F. Supp. 849 (CD Cal. 1983) (termination without good
 6 cause, based on mistaken judgment or failure to investigate further, even without warning
 7 or an opportunity to explain, and plaintiff's resulting humiliation was not sufficiently
 8 extreme and outrageous).

9 In *Cole, supra*, the California Supreme Court held that a supervisor's behavior, even
 10 if egregious, does not create a claim for IIED. The Court observed:

11 "An employer's supervisory conduct is inherently 'intentional.' In order to
 12 properly manage its business, every employer must on occasion review,
 13 criticize, demote transfer and discipline employees. Employers are
 14 necessarily aware that their employees will feel distressed by adverse
 15 personnel decisions, while employees may consider any such adverse action
 16 to be improper and outrageous. Indeed, it would be unusual for an employee
 17 not to suffer emotional distress as a result of an unfavorable decision by his
 18 employer." *Cole*, 43 Cal.3d at 160.

19 The alleged conduct by Defendants as described in Plaintiff's Complaint includes: a
 20 4.8/5 performance rating, baseless criticism of his work, screaming at him about his work,
 21 another negative performance review, a 1.6/5 performance rating, a final notice of
 22 underperformance, not informing him about the results of the investigations of his
 23 complaints, and his ultimate employment termination. Lynch Dec. Exh. A ¶¶ 12, 17-19,
 24 24-25, and 28. This alleged conduct includes management personnel actions and normal
 25 conduct involved in an employment relationship. Pursuant to the authorities cited above,
 26 Defendant's routine "management personnel actions," simply do not amount to "extreme"
 27 or "outrageous" conduct. Accordingly, Plaintiff's IIED claim against Defendants fails as
 28 a matter of law and should be dismissed accordingly.

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3. Even if the Court Believes the Conduct Described in the Complaint is not Pre-empted and is Extreme and Outrageous, There Are No Facts of Any Such Conduct by Scott or Eichinger

As discussed above, a claim for intentional infliction of emotional distress carries a high burden of proof; a burden that Plaintiff has not met. The standard is clear: “Extreme and outrageous conduct by the defendant; plaintiff’s suffering severe or extreme emotional distress; and actual and proximate causation between the two.” *Hughes v. Pair* 46 Cal.4th 1035 (2009).

The Complaint fails to allege any facts of negative treatment by Defendants Scott or Eichinger directed at Plaintiff, let alone anything extreme or outrageous. The allegations against Defendant Scott pertain to Plaintiff reporting Defendant Palesh’s “harassing and retaliatory treatment” to him and Defendant Scott denying Plaintiff’s request to report to another supervisor. Lynch Dec. Exh. A, ¶¶ 15, 16. These facts do not rise to the level of egregious behavior, which courts have even deemed permissible for management decisions. *Cole*, 43 Cal.3d at 160. Though Plaintiff may have been distressed by the decision of not being allowed to report to another supervisory Defendant Scott’s actions are personnel management ones.

Similarly, there are no allegations of negative treatment of Plaintiff by Defendant Eichinger. Plaintiff claims Eichinger told Plaintiff about a plan for investigation of his concerns. He claims Eichinger reported to Plaintiff that “no further action has been deemed necessary” regarding Plaintiff’s business issues concerns, and that Eichinger did not otherwise inform Plaintiff of the results of his investigation. This is simply not the sort of extreme and outrageous behavior that can support a claim for intentional infliction of emotional distress. *Hughes, supra*, 46 Cal.4th at 1050-51.

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F. Plaintiff's Eighth Cause of Action for Wrongful Termination In Violation of Public Policy Must be Dismissed Against the Individual Defendants Because This Claim Cannot be Alleged Against Individuals

California law does not recognize wrongful termination-based theories against individual supervisors who are not the plaintiff's employer. *Khajavi v. Feather River Anesthesia Medical Grp.*, 84 Cal.App.4th 32, 38 (2000) ("Only an employer can be liable for the tort of wrongful discharge of an employee"); see also *Reno supra*, 18 Cal.4th 640, 663 (public policy in question governed actions of employers not individual supervisors and thus individual supervisors cannot have liability for public policy claim).

Since this cause of action is barred by California law as against the Individual Defendants, it should be dismissed as against them.

IV. PLAINTIFF SHOULD NOT BE GRANTED LEAVE TO AMEND HIS COMPLAINT

Leave to amend should be denied where amendment is futile or would be subject to dismissal. *See generally Jahelka v. Southern Cal. Cas. Co.*, 1997 U.S. App. LEXIS 22410 (9th Cir. 1997) (upholding denial of leave to amend because new claims would suffer from same defect as those dismissed in summary judgment); *Saul v. United States*, 928 F.2d 829, 843 (9th Cir. 1991) (court does not abuse its discretion in denying leave to amend where amendment would be futile or amended complaint would be subject to dismissal). As discussed above, there is no amendment Plaintiff could make to his Complaint to cure the legal defects described above, and thus any request Plaintiff might make for leave to amend should be denied.

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1 **V. CONCLUSION**

2 For the foregoing reasons, Defendants respectfully requests that the Court dismiss
3 Plaintiff's second, third, fourth, fifth and seventh causes of action and his eighth cause of
4 action as against the Individual Defendants.

5 DATED: August 11, 2023

JACKSON LEWIS P.C.

6
7 By: 

8 Alison L. Lynch
9 Donald E. English, Jr.
Parth P. Jani

10 Attorneys for Defendant
11 PFIZER INC., TARA PALESH,
JEFF SCOTT and ERIC EICHINGER

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Attorneys for Defendants
PFIZER INC., TARA PALESH,
JEFF SCOTT and ERIC EICHINGER

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

FRANK HAN, an individual,

Plaintiff,

vs.

PFIZER, INC.; a Delaware corporation;
TARA PALESH, an individual; JEFF
SCOTT, an individual; ERIC
EICHINGER, an individual; and DOES
1 through 100, inclusive,

Defendants.

CASE NO.: 4:23-cv-03908-DMR

DATE: October 12, 2023
TIME: 1:00 p.m.
CTRM: 4 - 3rd Floor

**DECLARATION OF ALISON L.
LYNCH IN SUPPORT OF
DEFENDANTS' MOTION TO DISMISS
PLAINTIFF'S COMPLAINT**

[FED. R. CIV. P. 12(b)(6)]

*[Filed concurrently with Notice of Motion
and Motion; and [Proposed] Order]*

State Court Complaint Filed: April 25, 2023
Removed: August 4, 2023

DECLARATION OF ALISON L. LYNCH

I, Alison L. Lynch, declare:

1. I am an attorney duly admitted to practice law before all the courts in the State of California and in the United States District Court for the Northern District of California, with which I am in good standing. I am an attorney with the law firm of Jackson Lewis, P.C., attorneys of record for Defendants Pfizer, Palesh, Scott and Eichinger. I am one of the attorneys primarily responsible for defending this matter, and I am familiar with the contents of the file and the proceedings herein. I have personal knowledge of the facts contained in this declaration, and, if called upon as a witness, I would and could competently testify thereto.

2. On April 25, 2023, Plaintiff Frank Han ("Plaintiff") filed a Complaint against Defendants in the San Francisco County Superior Court, entitled *Frank Han v. Pfizer, Inc., et al.*, Case No. CGC-23-606080. In the Complaint, Plaintiff asserts the following causes of action: (1) Whistleblower Retaliation; (2) Hostile Work Environment; (3) Harassment; (4) Failure to Prevent Harassment and Retaliation; (5) Intentional Infliction of Emotional Distress; (6) Violation of Business & Professions Code §17200-17208; (7) Retaliation in Violation of Government Code §12900; and (8) Wrongful Termination in Violation of Public Policy. A true and correct copy of this Complaint and accompanying Summons is attached hereto as **Exhibit A**.

3. Defendants were served with a Notice and Acknowledgement of Receipt with a copy of Plaintiffs' Summons, Complaint and other related court documents on June 14, 2023.

4. On July 5, 2022, Defendants executed and returned the Notice and Acknowledgement of Receipt.

5. On August 4, 2023, Defendants removed this case to this Court from the Superior Court of San Francisco. Defendants did respond to the Complaint in state court prior to removing the case to this Court. Pursuant to Federal Rule of Civil Procedure 81, Defendants responsive pleading deadline is thus August 11, 2023.

1 I declare under penalty of perjury under the laws of the United States of America
2 and the state of California that the foregoing is true and correct.

3 Executed this 11th day of August 2023, at Irvine, California.

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5 _____
6 Alison L. Lynch

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EXHIBIT “A”

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Attorneys for Plaintiff, FRANK HAN

ELECTRONICALLY
FILED

Superior Court of California,
 County of San Francisco

04/25/2023
Clerk of the Court
 BY: JEFFREY FLORES
 Deputy Clerk

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
 FOR THE COUNTY SAN FRANCISCO**

CGC-23-606080

FRANK HAN, an individual,

 PLAINTIFF,

v.

PFIZER INC., a Delaware Corporation;
 TARA PALESH, an individual; JEFF
 SCOTT; an individual; ERIC EICHINGER;
 an individual; and DOES 1 through 100,
 inclusive,

DEFENDANTS.

Case No.:

COMPLAINT FOR DAMAGES:

- 1. Whistleblower (Cal. Lab. Code § 1102.5)**
- 2. Hostile Work Environment;**
- 3. Harassment;**
- 4. Failure to Prevent, Harassment, and Retaliation;**
- 5. Intentional Infliction of Emotional Distress;**
- 6. Violation of Business & Professions Code §17200-17208;**
- 7. Retaliation in Violation of Government Code §12900, et seq.; and**
- 8. Wrongful Termination in Violation of Public Policy.**

PLAINTIFF FRANK HAN, by and through his attorneys of record herein, brings this complaint against DEFENDANTS PFIZER INC., TARA PALESH, JEFF SCOTT, ERIC EICHINGER and DOES 1 through 100 (collectively "DEFENDANTS") as follows:

I. GENERAL ALLEGATIONS

1. At all relevant times, PLAINTIFF FRANK HAN (hereinafter referred to as “PLAINTIFF”) is an individual residing in the County of Alameda, State of California, and was an employee of DEFENDANT PFIZER INC. At all relevant times, DEFENDANT PFIZER INC., was and now is a Delaware limited liability corporation, existing, doing business as PFIZER INC. (hereinafter referred to as “EMPLOYER” or “PFIZER”), and employing individuals in the County of San Francisco, State of California. PLAINTIFF is informed and believes that DEFENDANT PFIZER INC. is a Delaware limited liability company doing business in the County of San Francisco, California, and operating in and under the laws of the State of California. DEFENDANT PFIZER’S headquarters is in New York. DEFENDANT TARA PALESH (hereinafter “PALESH”), DEFENDANT JEFF SCOTT (hereinafter “SCOTT”), and DEFENDANT ERIC EICHINGER (hereinafter “EICHINGER”), were all individuals with managerial authority for DEFENDANT PFIZER INC. DEFENDANT PALESH resides in the County of New York, New York, and the residencies for DEFENDANTS SCOTT and EICHINGER are unknown to PLAINTIFF. The true names of the DEFENDANTS named herein as DOES 1 through 100, inclusive, whether individual, corporate, associate or otherwise, are unknown to the PLAINTIFF who, therefore sues such DEFENDANTS by fictitious names pursuant to California Code of Civil Procedure section 474. PLAINTIFF is informed and believes, and on that basis alleges that each DEFENDANT sued under such fictitious name is in some manner responsible for the wrongs and the damages as alleged below, and in so acting was functioning as the owner, shareholder, agent, servant, partner, joint venturer, alter-ego, employee, proxy, managing agent, and principal of the CO-DEFENDANTS, and in doing the actions mentioned below was acting, at least in part, within the course and scope of their authority as such agent, servant, proxy, partner, joint venturer, employee, alter-ego, managing agent, and principal with the permission and consent of the DEFENDANTS.

2. The true names and capacities of DEFENDANTS DOES 1 through 100, inclusive, whether individual, corporate, associate or otherwise, are unknown to PLAINTIFF at the time of filing this Complaint and PLAINTIFF, therefore, sues said DEFENDANTS by such fictitious

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Valley Village, CA 91607

names and will ask leave of Court to amend this Complaint to show their true names or capacities when the same have been ascertained. PLAINTIFF is informed and believes, and based thereon alleges, that each of the DOE DEFENDANTS is, in some manner, responsible for the events and happenings herein set forth and proximately caused injury and damages to PLAINTIFF as herein alleged.

3. At all times herein mentioned, DEFENDANTS were acting as agents and/or employees of each of the remaining DEFENDANTS, and were, at all times herein mentions, acting within the scope of said agency and employment, except where alleged to the contrary.

4. Whenever in this Complaint reference is made to any act of DEFENDANTS, such allegations shall be deemed to mean all named DEFENDANTS and DOES 1 through 100, or their officers, agents, managers, representatives, employees, heirs, assignees, customers and tenants, did or authorized such acts while actively engaged in the operation, management, direction or control of the affairs of DEFENDANTS and while acting within the course and scope of their duties.

II. JURISDICTION AND VENUE

5. Venue is proper in San Francisco County because: (1) the employment relationship between PLAINTIFF and EMPLOYER arose and was performed here; (2) the injuries alleged herein occurred here; (3) the unlawful discriminatory and retaliatory practices alleged were committed here; (4) the records relevant to the unlawful discriminatory practices were maintained and administered here; and (5) PLAINTIFF would have worked here but for the alleged unlawful practices. This court is the proper court because the amount at issue exceeds the jurisdictional minimum of this court.

6. At all times herein, PLAINTIFF was duly qualified and did perform his employment duties in a satisfactory manner. PLAINTIFF performed and was willing to continue to perform all duties and responsibilities on his part to be performed, which duties and responsibilities were part of the employment relationship between EMPLOYER and PLAINTIFF. At all times, PLAINTIFF was an “employee” as that term is defined by California Government Code § 12926(c). As an employee of DEFENDANT PFIZER, PLAINTIFF was entitled to all of the benefits provided by EMPLOYER'S personnel policies, procedures and practices, and those

confirmed in the by-laws governing said organization. At all times, DEFENDANT PFIZER INC. is and was an “EMPLOYER” within the meaning of California Government Code § 12926(d). Hereinafter in the Complaint, unless otherwise specified, reference to a DEFENDANT or DEFENDANTS shall refer to all DEFENDANTS, and each of them.

III. EXHAUSTION OF ADMINISTRATIVE PROCEEDINGS

7. On February 24, 2023, prior to initiating this complaint, PLAINTIFF filed with the Department of Fair Employment and Housing (hereinafter “DFEH”), a Complaint of Discrimination, Harassment, and Retaliation against DEFENDANT PFIZER. On February 24, 2023, the DFEH issued a Notice of Case Closure and Right-to-Sue letter to PLAINTIFF, authorizing him to file a private lawsuit against DEFENDANTS in order to enforce his rights to full and equal employment opportunities free from unlawful discrimination and retaliation. Attached hereto as **Exhibit 1** is the Right-to-Sue letter. PLAINTIFF has therefore exhausted all administrative remedies as a prerequisite to filing this action.

IV. STATEMENT OF FACTS

8. PLAINTIFF worked for DEFENDANTS from May 2017 until November 2022. DEFENDANTS hired PLAINTIFF as an Associate Director and Group Lead for Clinical Programming. DEFENDANTS promoted PLAINTIFF to Director of Global Compliance Analytics in 2018. PLAINTIFF remained in that role until the date of his termination on November 3, 2022. DEFENDANT PALESH supervised PLAINTIFF during his employment with DEFENDANT PFIZER.

9. On or around August 6, 2021, PLAINTIFF was scored a 5.2 / 5 on his performance review by PALESH for completing two innovative and challenging breakthroughs.

10. On or around November 4, 2021, PLAINTIFF developed and presented a new algorithm on analysis of PFIZER’S global external fundings (between Q2 of 2019 through Q3 of 2021) to Potentially Influential Government Officials (“PIGOs”) to detect fraud. While developing this algorithm, PLAINTIFF discovered that DEFENDANTS spent over ten times the amount of money on PIGOs in China than they had spent on other countries during the same time frame. Specifically, PLAINTIFF discovered that DEFENDANT PFIZER had spent \$12 million in

1 the United States, \$11 million in Canada, \$7.5 million in Russia, and \$7.1 million in the United
2 Kingdom during this time frame but had spent *\$168 million* on PIGOs in China between Q2 of
3 2019 through Q3 of 2021. Out of the \$168 million PFIZER had spent on PIGOs in China during
4 this time, \$138 million had gone to corporate sponsorships. By way of comparison,
5 DEFENDANT PFIZER had spent just \$2 million on corporate sponsorships in the United States
6 during this time.

7 11. Upon discovery, PLAINTIFF raised these compliance concerns and potential
8 Foreign Corrupt Practices Act (“FCPA”) violations to his immediate supervisor PALESH, and
9 colleagues Ben Brackbill (Director, Reporting and Analytics Lead), and Steven Kim (Director,
10 Global Compliance Analytics) in virtual meeting presentation on November 4, 2021. However,
11 PLAINTIFF was never informed of any investigation conducted and/or whether or not the
12 concerns were raised to higher ups in the company.

13 12. On or around January 21, 2022, PLAINTIFF was scored 4.8/5 by PALESH in
14 his performance review. PALESH indicated that PLAINTIFF’S work was not translating into “end
15 products.” During this review, PALESH began baselessly critiquing his work, berating him, and
16 impeding his ability to perform his job.

17 13. On or around March 2, 2022, PLAINTIFF had a one-on-one meeting with
18 PALESH where PALESH screamed at PLAINTIFF about his work which caused PLAINTIFF
19 undue stress. It was clear to PLAINTIFF that PALESH’S statements and actions were in
20 retaliation to his complaints about the fraudulent activity he had uncovered.

21 14. On or around March 30, 2022, PLAINTIFF was issued his first performance
22 feedback by PALESH. During this interaction, PLAINTIFF informed PALESH that he was
23 overwhelmed with work and the situation he reported.

24 15. On or around March 31, 2022, PLAINTIFF reported PALESH’s harassing and
25 retaliatory treatment to his manager, DEFENDANT SCOTT.

26 16. On or around April 4, 2022, PLAINTIFF also reported PALESH’S retaliatory
27 conduct to DEFENDANT PFIZER’S Ombudsman Advisor Lourdes Delgado-Cheers. PLAINTIFF
28 informed SCOTT and Ms. Delgado-Cheers about PALESH’S retaliatory and harassing behavior.

1 PLAINTIFF told both SCOTT and Ms. Delgado-Cheers that PALESH’S improper behavior fit all
2 the signs of harassment (as stated in the PFIZER Harassment Training) and that it had created a
3 hostile work environment for him. On that same day, PLAINTIFF spoke to SCOTT and asked if
4 he could temporarily not report to PALESH until the situation improved and/or was investigated
5 by management. However, PLAINTIFF was told that if he wanted to continue to work for
6 DEFENDANT PFIZER, he had to report to PALESH.

7 17. On or around May 4, 2022, PALESH issued PLAINTIFF a second negative
8 Performance Feedback. PALESH wrongly accused PLAINTIFF of project delays and advised
9 PLAINTIFF to quit his employment with DEFENDANT PFIZER.

10 18. On or around August 1, 2022, PALESH issued PLAINTIFF a 1.6/5 on his
11 Performance Review. This review explicitly acknowledges that PALESH had given him a low
12 performance rating for working on compliance irregularities, because his project “was not work
13 that was required and currently there is no use case to leverage the work.”

14 19. On or around August 3, 2022, PALESH sent PLAINTIFF a “Final Notice of
15 Underperformance” and noted that PLAINTIFF “embarked on a Global Security analysis that was
16 not required or validated as useful ... instead of focusing on higher priority work as [he was]
17 coached.” PALESH made it clear that PLAINTIFF was being punished for uncovering the fraud.

18 20. On or around August 5, 2022, PLAINTIFF continued to report his concerns about
19 Ms. PALESH’s improper conduct (as well as the fraud he had discovered) to Ms. Delgado-Cheers.
20 In response, Ms. Delgado-Cheers recommended to PLAINTIFF that he present his performance
21 rebuttal to the chain of command of the Compliance Division based on DEFENDANT PFIZER’s
22 so-called open-door policy.

23 21. On or around August 21, 2022, PLAINTIFF submitted his rebuttal letter against
24 PALESH’S unfair performance review and once again raised the FCPA concerns.

25 22. On or around September 1, 2022, PLAINTIFF met with DEFENDANT PFIZER’S
26 Human Resource Manager, Eric EICHINGER. DEFENDANT EICHINGER broke down
27 PLAINTIFF’S concerns in PLAINTIFF’S rebuttal letter into three categories: (1) employee
28 relation issues between PLAINTIFF and PALESH; (2) performance review issues; and (3)

1 business issues. As to (1), EICHINGER told PLAINTIFF that he would investigate PLAINTIFF'S
2 concerns. Regarding (2), EICHINGER told PLAINTIFF he would have SCOTT investigate.
3 Regarding (3), EICHINGER told PLAINTIFF that DEFENDANT PFIZER'S audit team would
4 investigate the business concerns. PLAINTIFF was only ever contacted by the audit team for an
5 initial discussion.

6 23. On or around September 12, 2022, PLAINTIFF spoke to Jane Gerasimova and
7 Brian Badal from DEFENDANT PFIZER's Corporate Investigation team and once again raised
8 concerns about the FCPA violations. In response, EICHINGER told PLAINTIFF: "Per corporate
9 audit's investigative process, no further action has been deemed necessary."

10 24. On or around September 20, 2022, PLAINTIFF met with SCOTT in regard to the
11 Independent Performance Review investigation that was to be conducted by SCOTT. To date,
12 PLAINTIFF has never been informed of any outcome regarding said investigation by SCOTT.

13 25. On or around October 12, 2022, Mr. EICHINGER allegedly concluded his
14 investigation and left PLAINTIFF with the impression that he would inform PLAINTIFF of the
15 investigation results. To date, PLAINTIFF has never been informed of any outcome of said
16 investigation.

17 26. On or around October 17, 2022, PALESH issued PLAINTIFF a Notice of
18 Underperformance. That same day, PLAINTIFF reached out to DEFENDANT PFIZER'S
19 Ombudsman Advisor Lourdes Delgado-Cheers about the lack of transparency in the
20 investigations. PLAINTIFF informed the Ombudsman that, due to lack of transparency,
21 PLAINTIFF was left no choice but to report the DEFENDANTS to the Securities and Exchange
22 Commission ("SEC") for the perceived FCPA violations.

23 27. On or around October 22, 2022, PLAINTIFF filed a report with the SEC.
24 PLAINTIFF reported the same fraud discussed at length above and the misrepresentation and
25 corruption concerns he had repeatedly raised to the DEFENDANTS.

26 28. On or around November 3, 2022, after various rescheduled one-on-one meetings,
27 PALESH scheduled a virtual meeting with PLAINTIFF and DEFENDANT PFIZER's HR
28 Representative Kisha Daniels (hereinafter "Ms. Daniels"). Prior to this meeting, PLAINTIFF was

1 not informed that Ms. Daniel's would be included in the discussion with PALESH. To
 2 PLAINTIFF's surprise, PALESH announced the termination and asked PLAINTIFF to verify his
 3 personal email address and indicated she would be sending him the separation package via email.

4 29. On or around November 4, 2022, PLAINTIFF received a separation email to his
 5 personal email address.

6 **FIRST CAUSE OF ACTION**

7 **Whistleblower**

8 **[Cal. Lab. Code § 1102.5]**

9 **(By PLAINTIFF Against DEFENDANT Employer)**

10 30. PLAINTIFF restates and incorporates by this reference each and every preceding
 11 paragraph in this complaint as though full set forth at this point.

12 31. California Labor Code § 1102.5 prohibits employers from retaliating against
 13 employees who engage in protected "whistleblowing" activities when the employee has reasonable
 14 cause to believe that the information discloses a violation of state or federal statute. In addition,
 15 California Labor Code § 1102.5 subd. (b) forbids retaliation if the employee disclosed, or the
 16 employer believes he/she disclosed "to a person with authority over the employee or another
 17 employee who has the authority to investigate, discover, or correct the violation or
 18 noncompliance."

19 32. DEFENDANTS terminated PLAINTIFF in retaliation for disclosing information
 20 and/or refusing to participate in an unlawful act. Cal. Lab. Code. § 1102.5. DEFENDANTS
 21 believed and were aware that PLAINTIFF disclosed to a government agency and/or law
 22 enforcement agency the compliance irregularities and/or fraudulent activity.

23 33. PLAINTIFF reasonably believed that DEFENDANT PFIZER's policies violated
 24 federal, state, or local statutes, rules or regulations.

25 34. PLAINTIFF informed DEFENDANTS that he had no choice but to provide
 26 information to the SEC for it to conduct an investigation into PLAINTIFF's compliance concerns.
 27 PLAINTIFF had a reasonable cause to believe that the information disclosed was a violation of a
 28 local, state and/or federal statute, rule or regulation.

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35. DEFENDANTS terminated PLAINTIFF because he reported the noncompliance concerns, and PLAINTIFF was retaliated by a person “acting on behalf of the employer.” Cal. Lab. Code. § 1102.5(a)-(d). Further, PLAINTIFF’S disclosure of information was a contributing factor in DEFENDANTS’ decision to terminate PLAINTIFF.

36. As a proximate result of DEFENDANTS’ conduct and pursuant to Labor Code § 1102.5(f), PLAINTIFF was harmed and DEFENDANTS are liable to PLAINTIFF for a civil penalty. DEFENDANTS’ conduct was a substantial factor in causing PLAINTIFF’s harm.

37. As a further proximate result of DEFENDANTS’ conduct, PLAINTIFF has suffered actual, consequential and incidental financial losses, including without limitation, loss of salary and benefits, and the intangible loss of employment-related opportunities for growth in his field and damage to his professional reputation, all in an amount subject to proof at the time of trial. PLAINTIFF claims such amounts as damages together with prejudgment interest pursuant to Civil Code Sections 3287 and/or 3288 and/or any other provision of law providing for prejudgment interest.

38. As a further proximate result of the wrongful acts of DEFENDANTS, and each of them, PLAINTIFF has suffered and continues to suffer anxiety, worry, embarrassment, humiliation, mental anguish, and emotional distress and will likely incur, medical expenses as a result. PLAINTIFF is informed and believes and thereon alleges that he will continue to experience said pain and mental and emotional suffering for a period in the future he cannot presently ascertain, all in an amount subject to proof at the time of trial.

39. As a further proximate result of the wrongful acts of DEFENDANTS, and each of them, PLAINTIFF has been forced to hire attorneys to prosecute his claims herein and has incurred and is expected to continue to incur attorneys’ fees and costs in connection therewith. PLAINTIFF is entitled to recover such attorneys’ fees and costs under Labor Code § 1102.5(j) and/or any other provision of law providing for attorneys’ fees and costs.

40. The acts taken toward PLAINTIFF were carried out by and/or ratified by DEFENDANTS and/or managing agent employees of DEFENDANTS acting in a despicable, oppressive, fraudulent, malicious, deliberate, egregious, and inexcusable manner in order to injure

1 and damage PLAINTIFF, thereby justifying an award to him of punitive damages in a sum
2 appropriate to punish and make an example of DEFENDANTS.

3 **SECOND CAUSE OF ACTION**

4 **Hostile Work Environment**

5 **[California Government Code §§ 12940 *et seq.*]**

6 **(By PLAINTIFF against DEFENDANT Employer)**

7 41. PLAINTIFF restates and incorporates by this reference each and every preceding
8 paragraph in this complaint as though full set forth at this point.

9 42. At all times herein mentioned, FEHA, Government Code section 12940, *et seq.*,
10 was in full force and effect and was binding on DEFENDANTS. This statute requires
11 DEFENDANTS to refrain from harassing any employee because he or she is part of a protected
12 class.

13 43. PLAINTIFF was subjected to harassing conduct through a hostile work
14 environment, in whole or in part, after PLAINTIFF submitted a formal complaint. Pursuant to
15 Government Code section 12923(b), a single incident or harassing conduct is sufficient to create a
16 hostile work environment if the harassing conduct has unreasonably interfered with PLAINTIFF's
17 work performance or created an intimidating, hostile, or offensive working environment.

18 44. As a proximate result of DEFENDANTS' willful, knowing, and intentional
19 harassment of PLAINTIFF, PLAINTIFF has sustained and continues to sustain substantial losses
20 of earnings and other employment benefits.

21 45. As a proximate result of DEFENDANTS' willful knowing, and intentional
22 harassment of PLAINTIFF, PLAINTIFF has suffered and continues to suffer humiliation,
23 emotional distress, and mental and physical pain and anguish, all to his damage in a sum according
24 to proof.

25 46. PLAINTIFF has incurred and continues to incur legal expenses and attorneys' fees.
26 Pursuant to Government Code section 12965(b), PLAINTIFF is entitled to recover reasonable
27 attorneys' fees and costs (including expert costs) in an amount according to proof.

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47. DEFENDANTS' harassment was committed intentionally, in a malicious, fraudulent, and/or oppressive manner, and this entitles PLAINTIFF to punitive damages against DEFENDANTS.

THIRD CAUSE OF ACTION

Harassment

**[Violation of FEHA, California Government Code § 12940, *et seq.*
(By PLAINTIFF against all DEFENDANTS)]**

48. PLAINTIFF restates and incorporates by this reference each and every preceding paragraph in this complaint as though full set forth at this point.

49. California Government Code provides that it shall be unlawful for an employer or for any person to harass an employee because of a person's complaint. *See* Cal. Gov't Code § 12940.

50. As alleged above, during PLAINTIFF'S employment with DEFENDANTS, DEFENDANTS intentionally engaged in harassment of PLAINTIFF. DEFENDANTS, including through their managers and supervisors, acted in a manner that was antagonistic to PLAINTIFF and which exhibited harassing motivations, intentions, and consciousness. A reasonable person subjected to the harassing conduct would find, as PLAINTIFF did, that the harassment so altered PLAINTIFF's working conditions as to make it more difficult to do his job.

51. The doctrines of equitable tolling and continuing violations apply to PLAINTIFF'S claim of harassment. *See Richards v. CH2M Hill, Inc.*, 26 Cal.4th 798 (2001) (an employee is not required to file a lawsuit the moment conditions become intolerable for the employee); *McDonald v. Antelope Valley Community College Dist.*, 45 Cal.4th 88 (2008).

52. As a proximate result of DEFENDANTS' willful, knowing, and intentional harassment against PLAINTIFF, PLAINTIFF has sustained and continues to sustain substantial losses of earnings and other employment benefits, and has suffered and continues to suffer humiliation, emotional distress, and physical and mental pain and anguish, all to his damage in a sum according to proof.

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FOURTH CAUSE OF ACTION
Failure to Prevent, Investigate, and Remedy Harassment, or Retaliation
[Violation of the FEHA, Cal. Gov't Code § 12940(k)]
(By PLAINTIFF against DEFENDANT Employer)

53. PLAINTIFF restates and incorporates by this reference each and every preceding paragraph in this complaint as though full set forth at this point.

54. California law requires employers to “take all reasonable steps necessary to prevent” and correct wrongful behavior, including but not limited to, discriminatory and harassing behavior in the workplace. *See* Cal. Gov’t Code § 12940(k); *see also* Cal. Gov’t Code § 12940(j). (“Harassment of an employee ... shall be unlawful if the entity, or its agents or supervisors, knows or should have known of this conduct and fails to take immediate and appropriate corrective action.”).

55. As alleged herein and above, DEFENDANTS violated California law by failing to take all reasonable steps necessary to prevent the harassment, discrimination, and retaliation from occurring. *See* Cal. Gov’t. Code § 12940(k).

56. As a proximate result of DEFENDANTS’ willful, knowing, and intentional failure to prevent, investigate or remedy harassment, discrimination, and retaliation against PLAINTIFF, PLAINTIFF has sustained and continues to sustain substantial losses of earnings and other employment benefits.

57. As a proximate result of DEFENDANTS’ willful, knowing, and intentional failure to prevent, investigate, or remedy discrimination, harassment, or retaliation against PLAINTIFF, PLAINTIFF has suffered and continues to suffer humiliation, emotional distress, and mental and physical pain and anguish, all to his damage in a sum according to proof. PLAINTIFF has incurred and continues to incur legal expenses and attorneys’ fees. Pursuant to California Government Code section 12965(b), PLAINTIFF is entitled to recover reasonable attorneys’ fees and costs (including expert costs) in an amount according to proof.

58. DEFENDANTS committed the acts herein despicably, maliciously, fraudulently, and oppressively, with the wrongful intention of injuring PLAINTIFF, from an improper and evil

1 motive amounting to malice, and in conscious disregard of the rights of PLAINTIFF. PLAINTIFF
2 is thus entitled to punitive damages from DEFENDANTS in an amount according to proof.

3 **FIFTH CAUSE OF ACTION**
4 **Intentional Infliction of Emotional Distress**
5 **[California Gov. Code 12965(b) and Gov. Code Section 12900 *et seq.*]**
6 **(By PLAINTIFF against DEFENDANT Employer)**

7 59. PLAINTIFF restates and incorporated by this reference each and every preceding
8 paragraph in this complaint as though fully set forth at this point.

9 60. The above-referenced conduct was extreme, outrageous and beyond all possible
10 bounds of human decency as DEFENDANTS knew and condoned the intentional conduct of its
11 agents, which conduct is regarded as atrocious and utterly intolerable in an employment
12 environment or civilized community matter.

13 61. DEFENDANTS conduct was done with reckless disregard of the probability of
14 causing PLAINTIFF emotional distress or with the intent of causing PLAINTIFF to suffer
15 emotional distress.

16 62. PLAINTIFF did in fact suffer severe emotional distress. PLAINTIFF'S emotional
17 distress was a direct and proximate result of outrageous conduct of DEFENDANTS.

18 63. Moreover, DEFENDANTS' conduct was oppressive, fraudulent, malicious,
19 despicable, and was carried on by DEFENDANTS with willful disregard of the rights or safety of
20 PLAINTIFF. DEFENDANTS therefore subjected PLAINTIFF to cruel and unjust hardship in
21 conscious disregard of PLAINTIFF's rights.

22 64. As a further proximate result of DEFENDANTS' actions against PLAINTIFF, as
23 alleged above, PLAINTIFF has been harmed in that PLAINTIFF has suffered humiliation, mental
24 anguish, emotional and physical distress, anxiety, and has been injured in the mind and body.
25 PLAINTIFF is thereby entitled to general and compensatory damages in an amount to be proven at
26 trial.

27 65. PLAINTIFF is further informed and believes that each business or employer,
28 through its officers, directors and managing agents, and each individual has advanced knowledge
of the wrongful conduct set forth above and sanctioned said wrongful conduct, thereby ratifying it,

1 with a conscious disregard of the rights and safety of PLAINTIFF and for the deleterious
 2 consequences of DEFENDANTS' actions, and after becoming aware of their wrongful conduct,
 3 each DEFENDANT and DOES 1 through 100 by and through its agents, and each individual
 4 DEFENDANT and DOES 1 through 100, authorized and ratified the wrongful conduct herein
 5 alleged. Accordingly, PLAINTIFF seeks an award of punitive and exemplary damages in an
 6 amount according to proof.

7
 8 **SIXTH CAUSE OF ACTION**
Violation of Business & Professions
[Code §17200-17208]
 9 **(By PLAINTIFF against DEFENDANT Employer)**

10 66. PLAINTIFF restates and incorporates by this reference each and every preceding
 11 paragraph in this complaint as though full set forth at this point.

12 67. California Business & Professions Code §§ 17200-*et seq.* prohibits acts of unfair
 13 competition, which includes any "unlawful and unfair business practices." It is the policy of this
 14 State to enforce minimum labor standards, to ensure that employees are not required or permitted
 15 to work under substandard and unlawful conditions, and to protect those employers who comply
 16 with the law from losing competitive advantage to other employers who fail to comply with labor
 17 standards and requirements.

18 68. Through the conduct alleged herein, DEFENDANTS acted contrary to these public
 19 policies and has engaged in unlawful and/or unfair business practices in violation of Business &
 20 Professions Code §§17200, *et seq.* depriving PLAINTIFF his rights, benefits, and privileges
 21 guaranteed to employees under California law.

22 69. Additionally, and throughout PLAINTIFF'S employment with DEFENDANTS,
 23 DEFENDANTS have committed unlawful, unfair, and/or fraudulent business acts and practices as
 24 defined and in violation of Business & Professions Code §§17200 by failing to pay overtime
 25 wages, to provide meal and rest breaks, to pay wages due at the time of separation, to furnish
 26 timely and accurate wage statements, to remit gratuities, and to reimburse business expenses in
 27 violation of California law.

28 ///

70. By engaging in these business practices, which are unfair business practices within the meaning of Business & Professions Code §§17200 *et. seq.*, DEFENDANTS have reaped unfair benefits and illegal profits at the expense of PLAINTIFF. DEFENDANTS must disgorge these ill-gotten gains and restore to PLAINTIFF the wrongfully withheld wages pursuant to section 17203 of the California Business and Professions Code.

SEVENTH CAUSE OF ACTION
Retaliation In Violation of Public Policy
[Government Code § 12900, *et seq.*]
(By PLAINTIFF against DEFENDANT Employer)

71. PLAINTIFF restates and incorporates by this reference each and every preceding paragraph in this complaint as though full set forth at this point. At all times herein mentioned, the FEHA was in full force and effect and was binding on DEFENDANTS. This statute requires DEFENDANTS to refrain from retaliating against any employee for opposing practices forbidden by the FEHA or who asserts rights under FEHA, including complaining of discrimination or harassment.

72. DEFENDANTS, through their agents and supervisors, took actions and made a number of comments to and about PLAINTIFF that exhibited discriminatory, harassing and retaliatory motivations, intentions, and consciousness.

73. The decision to terminate PLAINTIFF's employment was in retaliation for PLAINTIFF engaging in protected activity, including his complaints described above.

74. The doctrines of equitable tolling and continuing violations apply to PLAINTIFF'S claims of retaliation. *See Richards v. CH2M Hill, Inc.*, 26 Cal.4th 798 (2001); *McDonald v. Antelope Valley Community College Dist.*, 45 Cal.4th 88 (2008).

75. As a proximate result of DEFENDANTS' willful, knowing, and intentional retaliation against PLAINTIFF, PLAINTIFF has sustained and continues to sustain substantial losses of earnings and other employment benefits.

76. As a proximate result of DEFENDANTS' willful, knowing, and intentional retaliation against PLAINTIFF, PLAINTIFF has suffered and continues to suffer humiliation,

emotional distress, and mental and physical pain and anguish, all to his damage in a sum according to proof.

77. PLAINTIFF has incurred and continues to incur legal expenses and attorneys' fees. Pursuant to California Government Code section 12965(b), PLAINTIFF is entitled to recover reasonable attorneys' fees and costs (including expert costs) in an amount according to proof.

78. DEFENDANTS committed the acts herein despicably, maliciously, fraudulently, and oppressively, with the wrongful intention of injuring PLAINTIFF, from an improper and evil motive amounting to malice, and in conscious disregard of the rights of PLAINTIFF. PLAINTIFF is thus entitled to punitive damages from DEFENDANTS in an amount according to proof.

EIGHTH CAUSE OF ACTION
Wrongful Termination in Violation of Public Policy
(By PLAINTIFF against all DEFENDANTS)

79. PLAINTIFF restates and incorporates by this reference each and every preceding paragraph in this complaint as though full set forth at this point.

80. Under California law, it is unlawful for an employer to terminate an employee in violation of a fundamental public policy of the United States of America and/or the State of California.

81. As alleged herein, DEFENDANTS' decision to terminate PLAINTIFF was substantially motivated by PLAINTIFF's protected status in blatant violation of the public policy protections set forth in the FEHA and California Labor Code. PLAINTIFF is informed and believes that DEFENDANTS' managing agents made the decision to terminate PLAINTIFF and that DEFENDANTS ratified their decision.

82. As a direct and proximate result of the violation of PLAINTIFF's rights under California law, PLAINTIFF has sustained and continues to sustain substantial losses of earnings and employment benefits.

83. As a proximate result of the violation of PLAINTIFF'S right under California law, PLAINTIFF has suffered and continues to suffer humiliation, emotional distress, and physical and mental pain and anguish, all to her damage in a sum according to proof.

84. DEFENDANTS committed the acts herein despicably, maliciously, fraudulently, and oppressively, with the wrongful intention of injuring PLAINTIFF, from an improper and evil motive amounting to malice, and in conscious disregard of the rights of PLAINTIFF. PLAINTIFF is thus entitled to punitive damages from DEFENDANTS in an amount according to proof. PLAINTIFF is presently unaware of the precise amount of these expenses and fees, and prays leave of Court to amend this Complaint when the amounts are more fully known.

PRAYER FOR RELIEF

WHEREFORE, PLAINTIFF prays for relief against DEFENDANTS as follows:

1. For economic, non-economic, general and compensatory damages, including but not limited to lost wages and employment benefits at the prevailing rate and other special damages according to proof;
2. For mental and emotional distress damages;
3. For punitive and exemplary damages;
4. For an award of interest, including prejudgement interest, at the legal rate;
5. For equitable remedies including injunctive and declaratory relief;
6. For interest accrued to date;
7. For costs of suit, including reasonable attorneys fees and costs, including expert witness fees, pursuant to California Government Code section 12965(b), and all other applicable laws;
8. For reinstatement to his job with DEFENDANT EMPLOYER; and
9. For such other and further relief as this Court may deem just and proper.

DEMAND FOR JURY TRIAL

10. PLAINTIFF hereby demands a jury trial for the causes of action set forth herein.

DATED: April 25, 2023

ALDERLAW, PC

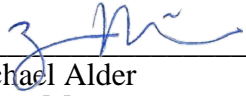
By: 
 Michael Alder
 Zulma Munoz
 Attorneys for PLAINTIFF
 FRANK HAN

EXHIBIT 1



Civil Rights Department

2218 Kausen Drive, Suite 100 | Elk Grove | CA | 95758
800-884-1684 (voice) | 800-700-2320 (TTY) | California's Relay Service at 711
calcivilrights.ca.gov | contact.center@dfeh.ca.gov

February 24, 2023

Michael Alder
12800 Riverside Drive, 2nd Floor
Valley Village, CA 91607

RE: **Notice to Complainant's Attorney**
CRD Matter Number: 202302-19785124
Right to Sue: Han / Pfizer

Dear Michael Alder:

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

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calcivilrights.ca.gov | contact.center@dfeh.ca.gov

February 24, 2023

RE: Notice of Filing of Discrimination Complaint

CRD Matter Number: 202302-19785124

Right to Sue: Han / Pfizer

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.

This matter may qualify for CRD's Small Employer Family Leave Mediation Pilot Program. Under this program, established under Government Code section 12945.21, a small employer with 5 -19 employees, charged with violation of the California Family Rights Act, Government Code section 12945.2, has the right to participate in CRD's free mediation program. Under this program both the employee requesting an immediate right to sue and the employer charged with the violation may request that all parties participate in CRD's free mediation program. The employee is required to contact the Department's Dispute Resolution Division prior to filing a civil action and must also indicate whether they are requesting mediation. The employee is prohibited from filing a civil action unless the Department does not initiate mediation within the time period specified in section 12945.21, subdivision (b) (4), or until the mediation is complete or is unsuccessful. The employee's statute of limitations to file a civil action, including for all related claims not arising under section 12945.2, is tolled from the date the employee contacts the Department regarding the intent to pursue legal action until the mediation is complete or is unsuccessful. You may contact CRD's Small Employer Family Leave Mediation Pilot Program by emailing DRDOnlineRequests@dfeh.ca.gov and include the CRD matter number indicated on the Right to Sue notice.

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,



STATE OF CALIFORNIA | Business, Consumer Services and Housing Agency

GAVIN NEWSOM, GOVERNOR

Civil Rights Department

KEVIN KISH, DIRECTOR

2218 Kausen Drive, Suite 100 | Elk Grove | CA | 95758
800-884-1684 (voice) | 800-700-2320 (TTY) | California's Relay Service at 711
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Civil Rights Department



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February 24, 2023

Frank Han

,

RE: **Notice of Case Closure and Right to Sue**

CRD Matter Number: 202302-19785124

Right to Sue: Han / Pfizer

Dear Frank Han:

This letter informs you that the above-referenced complaint filed with the Civil Rights Department (CRD) has been closed effective February 24, 2023 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.

This matter may qualify for CRD's Small Employer Family Leave Mediation Pilot Program. Under this program, established under Government Code section 12945.21, a small employer with 5 -19 employees, charged with violation of the California Family Rights Act, Government Code section 12945.2, has the right to participate in CRD's free mediation program. Under this program both the employee requesting an immediate right to sue and the employer charged with the violation may request that all parties participate in CRD's free mediation program. The employee is required to contact the Department's Dispute Resolution Division prior to filing a civil action and must also indicate whether they are requesting mediation. The employee is prohibited from filing a civil action unless the Department does not initiate mediation within the time period specified in section 12945.21, subdivision (b) (4), or until the mediation is complete or is unsuccessful. The employee's statute of limitations to file a civil action, including for all related claims not arising under section 12945.2, is tolled from the date the employee contacts the Department regarding the intent to pursue legal action until the mediation is complete or is unsuccessful. Contact CRD's Small Employer Family Leave Mediation Pilot Program by emailing DRDOnlineRequests@dfeh.ca.gov and include the CRD matter number indicated on the Right to Sue notice.



Civil Rights Department

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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

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

In the Matter of the Complaint of

Frank Han

CRD No. 202302-19785124

Complainant,

vs.

Pfizer
2002 N Tampa Street
Tampa, FL 33602

Respondents

1. Respondent **Pfizer** is an **employer** subject to suit under the California Fair Employment and Housing Act (FEHA) (Gov. Code, § 12900 et seq.).

2. Complainant **Frank Han**, resides in the City of , State of .

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

Complainant was harassed because of complainant's age (40 and over), race (includes hairstyle and hair texture).

Complainant was discriminated against because of complainant's age (40 and over), race (includes hairstyle and hair texture) and as a result of the discrimination was terminated.

Complainant experienced retaliation because complainant reported or resisted any form of discrimination or harassment and as a result was terminated.

Additional Complaint Details: Respondent Pfizer hired Claimant on or around 2017 as an Associate Director and Group Lead for Statistical Programming and was soon after promoted to Director of Global Compliance and Analytics.

-1-

Complaint – CRD No. 202302-19785124

Date Filed: February 24, 2023

1 In or around November 2021, Claimant present a new algorithm to detect fraud. In this
2 development, Claimant noticed fraudulent activity and raised compliance concerns –
3 potential Foreign Corrupt Practices Act (FCPA) violations – to supervisors.

4 On or around January 21, 2022, during Claimant's review, Supervisor Tara Palesh began
baselessly critiquing his work, berating him, and impeding his ability to perform his job.

5 In or around March 2022, in a one-on-one meeting, Palesh began raising her voice and
6 ultimately yelled at Claimant Claimant then reported Palesh's improper behavior to Palesh's
manager, Jeff Scott. Scott did nothing.

7 On or around April 2022, Claimant reported Palesh's improper treatment to Respondent's
8 Advisor, Lourdes Delgado-Cheers. Claimant reported the harassment and hostile work
environment to Delgado-Cheers.

9 In or around May 2022, Palesh created barriers causing Project delays for Claimant
10 ultimately affecting his performance. In or around August 2022, Palesh issued Claimant a
1.6/5 on his Performance Review in retaliation of reporting her harassment. Claimant
11 reported further concerns to Delgado-Cheers. In or around September 2022, Claimant met
with Eric Eichinger from Human Resources and reported all issues. Claimant was told that
12 an investigation would be conducted. In or around October 2022, Eichinger concluded his
investigation but did not disclose his findings. Claimant was left with no choice but to report
13 to the SEC about the perceived FCPA violations.

14 On or around October 22, 2022, Claimant filed a report with the SEC, where he reported
15 foreign bribery, misrepresentation and corruption. On or around November 03, 2022, only
days after filing an SEC complaint, Palesh and Pfizer retaliated against Claimant and
16 terminated him.

1 VERIFICATION

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

5 On February 24, 2023, I declare under penalty of perjury under the laws of the State
6 of California that the foregoing is true and correct.

7 **Valley Village, CA**
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Fax: (410) 415-2001
Donald.English@jacksonlewis.com

Attorneys for Defendants
PFIZER INC., TARA PALESH,
JEFF SCOTT and ERIC EICHINGER

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

FRANK HAN, an individual,

Plaintiff,

vs.

PFIZER INC.; a Delaware corporation;
TARA PALESH, an individual; JEFF
SCOTT, an individual; ERIC
EICHINGER, an individual; and DOES
1 through 100, inclusive,

Defendants.

CASE NO.: 4:23-cv-03908-DMR

DATE: October 12, 2023
TIME: 1:00 p.m.
CTRM: 4 - 3rd Floor

**DEFENDANT PFIZER INC.'S
[PROPOSED] ORDER ON
DEFENDANTS' MOTION TO DISMISS
PLAINTIFF'S COMPLAINT**

[FED. R. CIV. P. 12(b)(6)]

*[Filed concurrently with Notice of Motion
and Motion; and Declaration in support]*

State Court Complaint Filed: April 25, 2023
Removed: August 4, 2023

Defendant Pfizer Inc.'s ("Pfizer") Motion to Dismiss Plaintiff Frank Han's ("Plaintiff") Complaint came on for hearing before this Court on October 12, 2023, at 1:00 p.m. in Courtroom 4, The Honorable Donna M. Ryu, presiding.

After considering the moving, opposition and reply papers, the argument of counsel and all other matters presented to the Court, **IT IS HEREBY ORDERED:**

Defendant's Motion to Dismiss Plaintiff's Complaint is **GRANTED** as follows:

1. _____ Plaintiff's Second Cause of Action for violation of California Fair Employment and Housing Act - Hostile Work Environment is **dismissed**, [without/with leave to amend], for failure to state a claim upon which relief can be granted pursuant to Federal Rule of Civil Procedure Rule 12(b)(6);
2. _____ Plaintiff's Third Cause of Action for violation of California Fair Employment and Housing Act – Harassment is **dismissed**, [without/with leave to amend], for failure to state a claim upon which relief can be granted pursuant to Federal Rule of Civil Procedure Rule 12(b)(6);
3. _____ Plaintiff's Fourth Cause of Action for violation of California Fair Employment and Housing Act - Failure to Prevent, Harassment, and Retaliation is **dismissed**, [without/with leave to amend], for failure to state a claim upon which relief can be granted pursuant to Federal Rule of Civil Procedure Rule 12(b)(6);
4. _____ Plaintiff's Fifth Cause of Action for violation of Intentional Infliction of Emotional Distress is **dismissed**, [without/with leave to amend], because it is preempted by the Worker's Compensation Act or in the alternative for failure to state a claim upon which relief can be granted pursuant to Federal Rule of Civil Procedure Rule 12(b)(6);
5. _____ Plaintiff's Seventh Cause of Action for violation of California Fair Employment and Housing Act– Retaliation is **dismissed**, [without/with leave to amend], for failure to state a claim upon which relief can be granted pursuant to Federal Rule of Civil Procedure Rule 12(b)(6);

6. _____ Plaintiff's Eighth Cause of Action for Wrongful Termination in Violation of Public Policy against Individual Defendants Scott, Palesh, and Eichinger is **dismissed**, without leave to amend, for failure to state a claim upon which relief can be granted pursuant to Federal Rule of Civil Procedure Rule 12(b)(6).

IT IS SO ORDERED.

Dated: _____, 2023

Hon. Donna M. Ryu
United States Magistrate Judge

4865-8872-0756, v. 3