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Attorneys for Plaintiff
TERRY SANDRES

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA, FRESNO DIVISION

TERRY SANDRES, an individual,

Plaintiff,

vs.

CORRECTIONS CORPORATION OF
AMERICA, a Maryland corporation; CCA OF
TENNESSEE, LLC, a Tennessee limited liability
corporation; and Does 1 through 50, inclusive,

Defendants.

CASE NO. 1:09-CV-01609-OWW-DLB

Assigned to: Hon. Oliver W. Wanger/Room
3

State Court Case No. S-1500-CV-267904-
DRL

**[Proposed] Third Amended Complaint
for:**

- 1. DISABILITY
DISCRIMINATION (FEHA);**
- 2. FAILURE TO PROVIDE
REASONABLE
ACCOMODATION (FEHA);**
- 3. RETALIATION (FEHA);**
- 4. WRONGFUL TERMINATION
IN VIOLATION OF PUBLIC
POLICY; and**
- 5. FAILURE TO PERMIT
INSPECTION OR COPYING OF
EMPLOYMENT RECORDS**

DEMAND FOR JURY TRIAL

Plaintiff TERRY SANDRES complains and pleads as follows:

GENERAL ALLEGATIONS

1. At all relevant times, Plaintiff TERRY SANDRES (“Plaintiff” or “Sandres”) was
and now is an individual residing in the County of Los Angeles, State of California.

1 2. At all relevant times, Defendant CORRECTIONS CORPORATION OF AMERICA
2 (“Defendant” or “CCA”) was and now is a corporation organized and existing under the laws of the
3 State of Maryland, and doing business throughout the country, including at facilities in the State of
4 California. At all relevant times, Defendant CCA of Tennessee LLC (“Defendant” or CCA”) was
5 and now is a limited liability corporation organized and existing under the laws of the State of
6 Tennessee, and doing business throughout the country, including at facilities in the State of
7 California. CCA is a corporation which operates prison and detention facilities, including one in
8 California City, in Kern County, California, where Plaintiff worked.

9 3. Plaintiff is informed and believes and based thereon alleges that each Defendant was
10 the agent and employee of its Co-Defendants, and in doing the things alleged in this Complaint was
11 acting within the course and scope of that agency and employment.

12 4. The true names and capacities of Defendants sued herein as Does 1 through 50,
13 inclusive, are unknown to Plaintiff, but Plaintiff will amend this Complaint when and if the true
14 names of said Defendants become known to him. Plaintiff is informed and believes and based
15 thereon alleges that each of the Defendants sued herein as a Doe is responsible in some manner for
16 the events and happenings herein set forth and proximately caused injury and damages, and any
17 reference to “Defendant” shall mean “Defendant and each of them.”

18 5. Plaintiff Sandres began working for CCA as a corrections officer in or around July
19 2002. He regularly received positive performance reviews, raises, awards and letters of
20 recognition.

21 6. On February 16, 2004, Sandres received a very serious injury to his arm during a
22 football game with his team at work during work hours. Sandres’ supervisor directed the
23 employees involved to lie and state that the injury occurred during a training exercise. Several
24 employees followed instructions and provided such false statements. Sandres refused to lie and
25 told the truth about his injury. He did not want to make a false statement in support of his workers’
26 compensation claim. In retaliation, Defendant wrongfully terminated Sandres for fabricated and
27 false reasons. Sandres retained an attorney, and Defendant ultimately reinstated Sandres.

28 7. After Sandres was reinstated to his employment with Defendant, he needed to take

1 medical leaves of absence periodically for treatment for his arm injury, including several surgeries.
2 From the time he returned to work for Defendant, Sandres was often harassed and ostracized by his
3 co-workers and supervisors for taking time off for medical treatment, for having filed a worker's
4 compensation claim, and for reporting the unlawful conduct of his co-workers and supervisors. A
5 supervisor even made implied threats against Sandres, advising Sandres in front of inmates that if
6 anything were to happen to Sandres while he was in the prison population, he would not send
7 anyone to help Sandres. The supervisor also referred to Sandres as a "snitch" in front of co-
8 workers and inmates, hoping to incite violence against Sandres.

9 8. As a result of this harassment, retaliation, and threats against his physical safety,
10 Sandres began to suffer stress and anxiety. In or about August 2007, Sandres filed a worker's
11 compensation claim for these conditions. In or about August 2007, Sandres' doctor placed Sandres
12 on a medical leave of absence due to disability. Defendant was aware Sandres had a disability that
13 limited his major life activities.

14 9. In or around December 2007, Sandres was prepared to return to work, with
15 modifications if necessary. Sandres was able to perform the essential job duties with reasonable
16 accommodations. Defendant advised Sandres that he could not return to work until his worker's
17 compensation claim was completed. Defendant refused to engage in an interactive process and
18 refused to consider allowing Sandres to return to work with any reasonable accommodation. Thus,
19 Defendant forced Sandres to remain on medical leave.

20 10. On or about August 18, 2008, Sandres called Defendant's human resources
21 department to advise them that his worker's compensation claim was about to be resolved and to
22 tell them that he wanted to return to work. Sandres left a voicemail message with the human
23 resources department. On or about August 21, 2008, Sandres' worker's compensation claim was
24 resolved by a compromise and release. Sandres then made numerous attempts to contact
25 Defendant's human resources department to advise them that his worker's compensation claim had
26 been resolved and that he was eager to return to work. Sandres advised several people at
27 Defendant's facility of his desire to return to work. Between August 18, 2008 and October 2,
28 2008, Sandres called Defendant's human resources department several times, leaving voicemail

1 messages, and he sent correspondence by facsimile, all in efforts to return to work. Defendant's
2 Human Resources Manager, Salvador Carlton, would not take Sandres' calls, did not return his
3 calls, and did not respond to his correspondence.

4 11. On or about October 28, 2008, Defendant's Warden, J.E. Sugrue, sent Sandres a
5 letter falsely claiming that Mr. Carlton had called Sandres twice on October 2, and that because
6 Sandres did not call back Defendant had terminated Sandres' employment for alleged job
7 abandonment as of October 5, 2008. In fact, Defendant, including but not limited to its Warden,
8 J.E. Sugrue and Human Resources Manager Salvador Carlton, were all aware that Sandres had
9 been contacting Defendant repeatedly for nearly two months trying to return to work. Moreover,
10 Defendant's claim that Mr. Carlton had called and left messages for Sandres was false as well.
11 Defendant's termination of Sandres for job abandonment was false and pretextual. Plaintiff is
12 informed and believes and based thereon alleges that Defendant, and Warden Segrue in particular,
13 has a pattern and practice of terminating, for false and pretextual reasons, employees who have
14 sought a protected leave of absence or an accommodation for a disability. Moreover, Defendant,
15 and Warden Segrue in particular, has a pattern and practice of ignoring communications from
16 employees on medical leaves of absence and then terminating them for the false and pretextual
17 reasons of job abandonment. After learning of his termination, Sandres contacted Defendant to
18 initiate an internal grievance procedure pursuant to Defendant's written policies, but Warden
19 Segrue ignored this request and refused to allow the grievance procedure to take place. Warden
20 Sugrue was aware of the retaliation taken by Sandres' supervisor against Sandres for taking
21 medical leaves of absence due to disability, and approved, authorized and ratified this unlawful
22 conduct, even rewarding the supervisor. Warden Sugrue made the decision and/or authorized the
23 decision to discriminate against Sandres, to refuse to provide Sandres a reasonable accommodation,
24 and to terminate him for false, pretextual reasons, as he has done with other employees who have
25 had a disability or requested an accommodation. Warden Sugrue also adopted and approved of this
26 unlawful conduct by refusing to allow Sandres to pursue Defendant's internal grievance procedure.

27 12. According to Defendant's website, Wardens, including Warden Segrue, have
28 substantial discretion and responsibility in the operations of their facilities. Wardens, including

1 Warden Segrue, have a great deal of “operational oversight and accountability” over “financial,
2 administrative, regulatory, legal, [and] managerial functions” at their facilities. The Wardens,
3 including Warden Segrue, are responsible for addressing the “needs of the human resources,
4 maintenance, inmate programs, health services, security, education, food service and quality
5 assurance departments.” The Wardens, including Warden Segrue, are also responsible for
6 “develop[ing] and manag[ing] facility budgets and ensuring contractual compliance.”

7 13. Also according to Defendant’s website, the Wardens, including Warden Segrue, are
8 highly visible fixtures in the community, and they work collaboratively with area law enforcement,
9 local officials, nonprofit organizations, schools and others. The Wardens, including Warden
10 Segrue, are responsible for the management of the facility and they direct and administer the
11 activities of the entire facility. In the case of Warden Segrue at the California City facility, that
12 included the management of hundreds of employees and approximately 2,300 inmates. Warden
13 Segrue was given the discretion to disregard federal regulations in allowing an excessive number of
14 inmates. He was given the discretion to decide whether and how to respond to employee
15 complaints and issues with inmates. Warden Segrue had discretion to decide whether and how to
16 apply company policies on reasonable accommodations, requests for medical leaves of absence,
17 when to terminate employees who have requested accommodations or leaves of absence, whether
18 to reward supervisors known to have engaged in unlawful conduct, and whether or how to respond
19 to employee complaints and requests to participate in the company’s internal grievance procedure.
20 Warden Segrue was given complete discretion in how or if to apply such policies that directly
21 affected company and facility policies.

22 14. After his termination, Plaintiff contacted by mail Richard Seiter, who was
23 Defendant’s Executive Vice-President and Chief Corrections Officer, and a member of
24 Defendant’s executive management team and an officer of Defendant, in order to complain about
25 what had taken place and to ask to take advantage of Defendant’s grievance procedure. Mr. Seiter
26 ignored Plaintiff’s request. Also after his termination, Plaintiff called and left a voicemail message
27 for Brian Collins, who was Defendant’s Vice-President of Operations and also an officer of
28 Defendant, asking for a meeting to discuss his allegations. Mr. Collins also never responded to

1 Plaintiff's call.

2 15. As set forth above, Warden Segrue was a managing agent for Defendant and
3 engaged in the unlawful conduct alleged herein. In addition, Warden Segrue's conduct was
4 subsequently ratified by Mr. Seiter and Mr. Collins when they refused to take any action in
5 response to Plaintiff's complaints, and refused to allow Plaintiff to participate in Defendant's
6 grievance procedure. Mr. Seiter and Mr. Collins are officers of Defendant and exercised
7 substantial discretion and were in policy-making positions with Defendant, at Defendant's
8 corporate headquarters; and regularly made decisions that directly affect company policies.
9 Moreover, they both had and exercised their discretion to ignore and take no action in response to
10 Plaintiff's complaints, and to ratify the decision to refuse to accommodate Plaintiff and to retaliate
11 against him and to wrongfully terminate him for false and pretextual reasons. They were aware of
12 the unlawful conduct by Warden Segrue and his managers and supervisors such as terminating
13 employees who have sought reasonable accommodations and/or medical leaves of absence as it
14 was an ongoing practice, and the subject of complaints by Plaintiff and other employees in the past.
15 No action was taken by them or any other upper management, officers or directors of Defendant to
16 stop such unlawful practices. Thus, Mr. Seiter and Mr. Collins authorized or ratified such conduct
17 or acted with a reckless or conscious disregard knowing that such conduct would continue.

18 16. On or about November 15, 2008, Sandres sent Defendant a letter requesting to
19 inspect and/or copy his personnel file, including payroll records. Defendant ignored this request
20 and has never provided Plaintiff with his records.

21 17. On July 16, 2009, Sandres timely filed a Complaint of Discrimination with the
22 DFEH against Defendant Corrections Corporation of America, and received his "right-to-sue"
23 letter from the DFEH on July 16, 2009. On December 21, 2009, Sandres filed an Amended
24 Complaint of Discrimination with the DFEH against Defendant CCA of Tennessee LLC and
25 received a right to sue letter.

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FIRST CAUSE OF ACTION
DISABILITY DISCRIMINATION (“FEHA”)
(Against all Defendants)

18. Plaintiff re-alleges and incorporates herein by reference paragraphs 1 through 17, inclusive, of this Complaint as though fully set forth herein.

19. At all relevant times herein, Defendants were and are employers within the meaning of the California Fair Employment and Housing Act (“FEHA”), and as such, were barred from discriminating against employees on the basis of, inter alia, disability as set forth in Government Code Sections 12940 et seq. Further, Government Code section 12940(k) requires an employer to take all reasonable steps necessary to prevent harassment and discrimination from occurring.

20. At all relevant times herein, Plaintiff was an employee covered by Government Code sections 12940 et seq. Plaintiff also had disabilities covered by the FEHA.

21. By their conduct, Defendants harassed, discriminated and retaliated against Plaintiff on the basis of his disabilities and/or perceived disabilities, and failed to provide Plaintiff with a reasonable accommodation and/or to engage in the interactive process.

22. Defendant subjected Sandres to adverse employment actions due to his disabilities, by harassing him for taking medical leaves of absence, refusing to allow him to return to work and by terminating his employment.

23. As a proximate result of the wrongful conduct of Defendants, Plaintiff has sustained substantial losses in earnings and other employment benefits in an amount according to proof at the time of trial.

24. As a further proximate result of the wrongful conduct of Defendants, Plaintiff has suffered and continues to suffer humiliation, embarrassment, emotional distress and mental anguish, all to his damage in an amount according to proof at the time of trial.

25. In doing the acts herein alleged, Defendants acted with oppression, fraud, malice, and in the conscious disregard of the rights of Plaintiff. As set forth above, Warden Sugrue, a managing agent of Defendant, authorized, ratified, and engaged in the unlawful acts of Defendant. Plaintiff is therefore entitled to punitive damages in an amount according to proof at the time of

1 trial. Plaintiff is entitled to costs and reasonable attorney’s fees pursuant to Government Code
2 Section 12965(b).

3 **SECOND CAUSE OF ACTION**

4 **FAILURE TO PROVIDE REASONABLE ACCOMODATION (FEHA)**

5 **(Against all Defendants)**

6 26. Plaintiff re-alleges and incorporates herein by reference paragraphs 1 through 25,
7 inclusive, of this Complaint as though fully set forth herein.

8 27. At all relevant times herein, Defendants were and are employers within the meaning
9 of the California Fair Employment and Housing Act (“FEHA”), and as such, were barred from
10 discriminating against employees on the basis of, inter alia, disability as set forth in Government
11 Code Sections 12940 et seq. Further, Government Code section 12940(k) requires an employer to
12 take all reasonable steps necessary to prevent harassment and discrimination from occurring.

13 28. At all relevant times herein, Plaintiff was an employee covered by Government
14 Code sections 12940 et seq. Plaintiff also had disabilities covered by the FEHA.

15 29. By their conduct, Defendants failed to provide Plaintiff with a reasonable
16 accommodation and/or to engage in the interactive process. Defendant subjected Sandres to
17 adverse employment actions due to his disabilities.

18 30. Pursuant to the FEHA, Defendants were required to provide reasonable
19 accommodation for the known disability of an employee, and to engage in a timely, good faith,
20 interactive process to accomplish that goal as set forth in Government Code Sections 12940 (m)
21 and (n).

22 31. As a proximate result of the wrongful conduct of Defendants, Plaintiff has sustained
23 substantial losses in earnings and other employment benefits in an amount according to proof at the
24 time of trial.

25 32. As a further proximate result of the wrongful conduct of Defendants, Plaintiff has
26 suffered and continues to suffer humiliation, embarrassment, emotional distress and mental
27 anguish, all to his damage in an amount according to proof at the time of trial.

28 33. In doing the acts herein alleged, Defendants acted with oppression, fraud, malice,

1 and in the conscious disregard of the rights of Plaintiff. As set forth above, Warden Sugrue, a
2 managing agent of Defendant, authorized, ratified, and engaged in the unlawful acts of Defendant.
3 Plaintiff is therefore entitled to punitive damages in an amount according to proof at the time of
4 trial. Plaintiff is entitled to costs and reasonable attorney's fees pursuant to Government Code
5 Section 12965(b).

6 **THIRD CAUSE OF ACTION**

7 **RETALIATION (FEHA)**

8 **(Against all Defendants)**

9 34. Plaintiff re-alleges and incorporates herein by reference paragraphs 1 through 33,
10 inclusive, of this Complaint as though fully set forth herein.

11 35. At all relevant times herein, Defendants were and are employers within the meaning
12 of the FEHA, and as such, were barred from retaliating against employees on the basis of disability
13 and/or perceived disability, or for having taken medical leaves of absence for a disability.

14 36. At all relevant times herein, Plaintiff was an employee covered by Government
15 Code sections 12940 et seq.

16 37. Defendants engaged in unlawful employment practices in violation of the FEHA,
17 Government Code sections 12940 and 12940(h) by retaliating against Plaintiff.

18 38. Based on the above-alleged conduct, Defendants retaliated against Plaintiff for
19 taking protected medical leaves of absence and seeking reasonable accommodation, by refusing to
20 reinstate and instead terminating Plaintiff's employment. In addition, Defendants retaliated against
21 Plaintiff by harassing him for taking protected medical leaves of absence.

22 39. As a direct and proximate result of Defendants' conduct, Plaintiff has suffered
23 special damages in the form of lost earnings, benefits and/or out-of-pocket expenses in an amount
24 according to proof at trial. As a further direct and proximate result of Defendants' conduct,
25 Plaintiff will suffer additional special damages in the form of lost future earnings, benefits and/or
26 other prospective damages in an amount according to proof at trial.

27 40. As a further proximate result of the wrongful conduct of Defendants, Plaintiff has
28 suffered and continues to suffer humiliation, lack of self-confidence, embarrassment, emotional

1 distress and mental anguish, all to his damage in an amount according to proof at the time of trial.

2 41. In doing the acts herein alleged, Defendants acted with oppression, fraud, malice,
3 and in the conscious disregard of the rights of Plaintiff. Warden Sugrue, a managing agent of
4 Defendant, authorized, ratified, and engaged in the unlawful acts of Defendant. Plaintiff is
5 therefore entitled to punitive damages in an amount according to proof at the time of trial. Plaintiff
6 is entitled to costs and reasonable attorney's fees pursuant to Government Code Section 12965(b).

7 **FOURTH CAUSE OF ACTION**

8 **WRONGFUL TERMINATION IN VIOLATION OF PUBLIC POLICY**

9 **(Against all Defendants)**

10 42. Plaintiff re-alleges and incorporates herein by reference paragraphs 1 through 41,
11 inclusive, of this Complaint as though fully set forth herein.

12 43. Defendants discriminated against Plaintiff on grounds that violate California public
13 policies prohibiting discrimination against employees with disabilities and that require a reasonable
14 accommodation, and who take protected leaves of absence, as mandated by the FEHA,
15 Government Code section 12940, et seq.

16 44. As a proximate result of the wrongful conduct of Defendants, Plaintiff has suffered
17 and continues to sustain substantial losses in earnings and other employment benefits in an amount
18 according to proof at the time of trial.

19 45. As a further proximate result of the wrongful conduct of Defendants, Plaintiff has
20 suffered and continues to suffer humiliation, lack of self-confidence, embarrassment, emotional
21 distress and mental anguish, all to his damage in an amount according to proof at the time of trial.

22 46. In doing the acts herein alleged, Defendants acted with oppression, fraud, malice,
23 and in the conscious disregard of the rights of Plaintiff, and Plaintiff is therefore entitled to punitive
24 damages in an amount according to proof at the time of trial.

25 **FIFTH CAUSE OF ACTION**

26 **FAILURE TO PERMIT INSPECTION OR COPYING OF EMPLOYMENT RECORDS**

27 **(Against all Defendants)**

28 47. Plaintiff re-alleges and incorporates herein by reference paragraphs 1 through 16,

1 inclusive, of this Complaint as though fully set forth herein.

2 48. California Labor Code sections 226(b) and (c) require an employer to permit a
3 current or former employee to inspect or copy certain employment records upon reasonable
4 request, as soon as practicable, but in no event later than 21 days after the request. California
5 Labor Code section 226(f) provides that an employee aggrieved by a violation of section 226(c) is
6 entitled to recover a \$750 penalty from the employer. In addition, Labor Code sections 1198.5 and
7 1776 require an employer to allow an employee to inspect various personnel records.

8 49. On November 15, 2008, Plaintiff requested that Defendants allow him to inspect or
9 copy his personnel and payroll records. Defendants refused to permit Plaintiff to inspect or copy
10 his employment records upon his reasonable request to do so. Therefore, Defendants are liable to
11 Plaintiff in the amount set forth in California Labor Code section 226(f), plus attorney's fees and
12 costs pursuant to Labor Code section 226(g).

13 **PRAYER FOR RELIEF**

14 WHEREFORE, Plaintiffs respectfully pray for judgment against Defendants, and each of
15 them, according to proof, as follows:

- 16 a. For general and special damages, including lost wages, in a sum in excess of the
17 minimum jurisdictional limit of this Court, according to proof at trial;
- 18 b. For interest at the maximum legal rate;
- 19 c. For reasonable attorney's fees pursuant to statute, including but not limited to
20 Government Code Section 12965(b) and Labor Code Section 226(g);
- 21 d. For costs of suit incurred herein;
- 22 e. For statutory penalties;
- 23 f. For exemplary and punitive damages; and
- 24 g. For such other and further relief as the Court may deem just and proper.

25 Dated: December 22, 2009

Appell | Hilaire | Benardo LLP

26
27 By /s/ BARRY APPELL
Barry M. Appell
28 Attorney for Plaintiff Terry Sandres

DEMAND FOR JURY TRIAL

Plaintiffs hereby request a jury trial on the claims so triable.

Dated: December 22, 2009

Appell | Hilaire | Benardo LLP

By /s/ BARRY APPELL
Barry M. Appell
Attorney for Plaintiff Terry Sandres

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