

1 **ADISHIAN LAW GROUP, P.C.**
2 Christopher M. Adishian, Esq. [#172511]
3 Pacific Corporate Towers
4 222 N. Sepulveda Blvd., Ste. 2000
5 El Segundo, California 90245
6 Telephone: 310.726.0888
7 Facsimile: 866.350.0888

8 Attorneys for Plaintiff William V. Wenger

9
10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
11 **COUNTY OF LOS ANGELES**

12 WILLIAM V. WENGER, Colonel,
13 United States Army, Retired,

14 Plaintiff,

15 V.

16 CUBIC DEFENSE APPLICATIONS, INC.;
17 CUBIC GLOBAL DEFENSE, INC.; CUBIC
18 CORPORATION; and CUBIC
19 APPLICATIONS, INC., and DOES 1 through
20 50, Inclusive,

21 Defendants.

Case No.: BC610428

Hon. , Judge
Department

**FIRST AMENDED COMPLAINT
FOR DAMAGES:**

1. **Retaliatory Discharge**
[Labor Code §1102.5]
2. **Retaliation (FEHA)**
[Government Code § 12940(h)]
3. **Age Discrimination**
[Government Code § 12940(a)]
4. **Harassment**
[Government Code § 12940(j)]
5. **Failure to Prevent Discrimination
and Harassment**
[Government Code § 12940(k)]
6. **Wrongful Termination in
Violation of Public Policy**

Complaint Filed: February 16, 2016
Trial Date:

22 COMES NOW Plaintiff WILLIAM V. WENGER (“Plaintiff” or “Bill”) and alleges
23 as follows:

24 **PARTIES**

25 1. Plaintiff was, at all times relevant to this Complaint, an individual employed by
26 Defendants CUBIC APPLICATIONS, INC.; CUBIC CORPORATION; CUBIC GLOBAL
27
28

1 DEFENSE, INC.; and CUBIC DEFENSE APPLICATIONS, INC. (collectively referred to
2 herein as "CUBIC") while maintaining his permanent residence in the State of California.

3 2. Defendant CUBIC DEFENSE APPLICATIONS, INC. is, and all times herein
4 mentioned was, a California corporation licensed to do and doing business within the State
5 of California, with its principal place of business located at 9333 Balboa Avenue, San
6 Diego, California 92123.

7 3. Defendant CUBIC GLOBAL DEFENSE, INC. is, and at all times herein mentioned
8 was, a Delaware corporation qualified to do and doing business within the State of
9 California, with its worldwide headquarters located at 9333 Balboa Avenue, San Diego,
10 California 92123, thereby manifesting sufficient contact with the State of California to
11 establish jurisdiction.

12 4. Defendant CUBIC CORPORATION is, and at all times herein mentioned was, a
13 Delaware corporation qualified to do and doing business within the State of California,
14 with its worldwide headquarters located at 9333 Balboa Avenue, San Diego, California
15 92123, thereby manifesting sufficient contact with the State of California to establish
16 jurisdiction.

17 5. Defendant CUBIC APPLICATIONS, INC. was, at all times herein mentioned, a
18 California corporation licensed to do and doing business within the State of California,
19 with its principal place of business located at 9333 Balboa Avenue, San Diego, California
20 92123.

21 6. The CUBIC defendants, independently and jointly, employ more than 5 persons and
22 are employers as defined in the California Fair Employment and Housing Act ("FEHA").

23 7. Plaintiff is informed and believes and, based on that information and belief, alleges
24 that, at various times herein mentioned, each of the defendants was the agent, either direct,
25 ostensible or otherwise, servant, representative of employee of each of the remaining
26 defendants and, in engaging in certain acts hereinafter alleged, was acting within the course
27 and scope of said agency, service, representation, or employment and materially assisted
28 the other defendants. Plaintiff is further informed and believes and, based on that

1 information and belief, alleges that each of the defendants ratified the acts of the remaining
2 defendants.

3 8. Plaintiff is ignorant of the true names and capacities, whether individual, corporate,
4 associate or otherwise, of defendants sued herein as Does 1 through 50, inclusive, and
5 therefore sues said defendants by such fictitious names. Plaintiff is informed and believes
6 and, upon such information and belief, alleges that each of the defendants designated as a
7 Doe is legally responsible in some manner for the events and happenings referred to herein
8 and caused the damages proximately thereby to Plaintiff as hereinafter alleged. Plaintiff
9 will seek leave of court to amend this complaint to show the true names and capacities of
10 said Doe defendants when same have been ascertained.

11 **CASE SUMMARY**

12 9. After Plaintiff -- a retired, decorated Army colonel and former faculty member at
13 the Army War College -- objected to Cubic's fraudulent reporting pursuant to its contract
14 with the U.S. Government and its harassing, discriminatory and retaliatory treatment
15 towards him, Defendant Cubic terminated Plaintiff at the alleged bequest of its "customer"
16 for the pretextual reason that he was "not sufficiently knowledgeable" about course
17 materials at the Georgian Armed Forces Command and General Staff Course.

18 **STATEMENT OF FACTS**

19 10. Bill joined the military as an enlisted sergeant in UC Santa Barbara's ROTC in 1965
20 and was commissioned through ROTC as a Lieutenant in the Army in 1969. Bill served
21 honorably and with distinction in the military for over 45 years, achieving the rank of
22 Colonel by the time of his retirement in October 2000.

23 11. During his stellar military career, Bill served in command assignments for eleven
24 years, where he was charged with the command of platoons, companies, battalions, two
25 brigades and one division comprising 18,500 service men and women. Among his many
26 accomplishments during his term of military service, Bill served on the faculty of the
27 prestigious Army War College for three years and completed advanced training which
28 qualified him to perform duties in four Army branches (Infantry, Armor, Air Defense

1 Artillery and Transportation). During his military career, Bill served with the Airborne,
2 Ranger, Special Forces, Infantry, Armor, Logistics and Intelligence units of the Army, as
3 well as serving in seven joint service assignments. Bill further served as a military advisor
4 to three countries for more than six years.

5 12. Bill retired in 2000 with the rank of Colonel, having been awarded multiple
6 decorations for his significant contributions during his active service and subsequent
7 voluntary activations, including the three Bronze Stars, Defense Meritorious Service
8 Medal, Joint Service Commendation Medal and Combat Action Badge, to name just a few
9 of his prestigious commendations.

10 13. In 2004, although retired, Bill volunteered to return to active duty for a year and
11 served as Chief of Policy for the Multi-National Forces - Iraq during Operation Iraqi
12 Freedom. Bill's patriotic commitment to his country was exhibited in three additional tours
13 of duty for which he volunteered upon returning home from Iraq. In 2007, Bill again
14 volunteered for duty and served as Branch Chief, Counter Improvised Explosive Devices,
15 Regional Command – South, in Kandahar, Afghanistan in Operation Enduring Freedom.
16 Returning to combat duty in Iraq, Bill served from July 2008 to October 2009 as Director
17 of Iraq Transition and Advisory Team - Ministry of Interior, a Brigadier General
18 assignment. In 2010, Bill again volunteered to serve in Afghanistan as Senior Advisor to
19 the Afghanistan Uniform Police, the largest segment of the Afghan Police forces.

20 14. Bill did not stint on his education during his military years, obtaining, in addition to
21 his undergraduate degree from the UC Santa Barbara, Masters' degrees from Pepperdine
22 University, California State University, Long Beach and the American Military University.
23 Bill attended multiple military schools and was a graduate of the Army War College and
24 two Command and General Staff Colleges, Army and U.S. Marine Corps.

25 15. On or about February 21, 2012, based on Bill's exemplary military service record,
26 extensive military teaching experience and his stellar academic credentials, CUBIC hired
27 Bill to join the staff at the Georgian Armed Forces Command and General Staff Course
28 ("C&GSC"), taught in coordination with Georgian Armed Forces ("GAF") faculty, in

1 Tbilisi, Republic of Georgia, in the position of Senior Defense Advisor with curriculum and
2 course developer and instructor duties.

3 16. At the time Bill was hired and during the entire term of his employment with
4 CUBIC in Tbilisi, no employee in Cubic Georgia had more Joint Service experience in
5 uniform than Bill had, more higher-level command time or years in command, nor more
6 military and civilian education than Bill possessed.

7 17. Bill was hired by prior C&GSC team leader in Tbilisi, Col. Adolf Carlson, Ret., for
8 whom Bill had taught at the Army War College during his three year tenure there. Bill's
9 total compensation package for the first three years of his employment at CUBIC was
10 \$166,543.69 with a scheduled increase to \$172,390.46 for the contract years 2014-2017.

11 18. During the first two and one-half years of Bill's employment at C&GSC in Tbilisi,
12 Bill taught between 20 to 25 classes per year out of a total number of 80 to 85 courses and
13 worked an average of 45-50 hours per week, more class assignments and more hours
14 worked than any other C&GCS instructor during Bill's tenure in Tbilisi. During that period
15 of time, Bill made substantive contributions to CUBIC's mission in Georgia, including:

- 16 • Developing the content of teaching modules and classes relating to the Theory and
17 Nature of Warfare, Brigade Warfighting, Joint Operational Level of Warfare and
18 NATO Crisis Management;
- 19 • Assisting with the development of modifications for other teaching modules and
20 classes;
- 21 • Co-authoring the Georgian Armed Forces Staff Officer's Guide;
- 22 • Managing the production suspense schedules, translation and archiving of all
23 materials produced by CUBIC and GAF faculty which included management of over
24 5,000 separate components;
- 25 • Coordinating, writing the plans and facilitating the computer-based exercises for the
26 program;
- 27 • Writing the detailed "Road to War" contextual documents for Operational Planning
28 by the students for the required computer exercises; and

- Managing the IT resources of the C&GSC team.

Bill was lauded for his efforts, commitment and expertise in performing the duties associated with these varied responsibilities.

19. In or about November 2014, Bill's supervisor and Team Leader, Dave Prugh ("Prugh"), met with the C&GSC team and advised that as a result of his conversations with GAF faculty, it was determined that the American instructors should "step back" from full responsibility for their classes in order to allow the Georgian instructors to take the lead on presentations. In compliance with the directive from Prugh, Bill "stepped back", but continued to participate fully in assisting the Georgian instructors with their presentations so that the content and quality of the instruction for the Georgian soldiers remained the same.

20. In or about December 2014, Prugh informed Bill that the perception had allegedly developed among the Georgian instructors that Bill suddenly (after 2-1/2 years of exemplary teaching reviews) was not sufficiently knowledgeable in the subject matter to answer student questions and needed to, allegedly according to the Georgian instructors, become more involved with class presentations.

21. Bill was astonished as Prugh could offer no specifics, could not identify any Georgian instructor who had complained about Bill's performance in the classroom and the criticism of Bill's teaching abilities was in direct contravention of the directive from Prugh only a month earlier that the GAF wanted its own instructors to take the "laboring oar" in making class presentations. Irrespective of the total contradiction between Prugh's instructions less than 30 days earlier, Bill re-established an aggressive approach to his teaching duties.

22. On or about March 6, 2015, Prugh confronted Bill outside CUBIC's administrative office building and repeated his accusation that Bill was performing his teaching duties in a substandard manner. During the confrontation (which was witnessed by Bill's fellow instructors, Tom Taylor and Jonathan Scott), Prugh threatened Bill that unless he worked to make the pending W 400 Operational Level of War Module successful, for which Bill had

1 had not previously had any direct responsibility, Bill would be dismissed.

2 23. On or about March 6, 2015, in response to Prugh's profanity-laced tirade, Bill lodged
3 a formal written complaint with Bill Craven ("Craven"), CUBIC's Program Manager in the
4 Republic of Georgia, on CUBIC's "Employee Complaint Notice" form specifically
5 designed for that purpose. In the complaint, Bill described the March 6th incident with
6 Prugh, as well as the November meeting wherein Prugh had directed Bill to "step back" and
7 allow the Georgian instructors to take the lead in making class presentations. Bill's
8 complaint reiterated the CUBIC mandate that "[t]he Cubic team was hired to apply
9 American military standards to the classroom, not adapt our standards to Georgian student
10 observations".

11 24. On or about March 9, 2015, Bill met with Craven, at which time, Bill reiterated his
12 complaints that Prugh had created a hostile work environment and voiced his concerns
13 about Prugh's capability, or lack thereof, to serve in a supervisory capacity at CUBIC
14 C&GSC, but Craven disregarded Bill's concerns and focused only on Bill's alleged
15 teaching deficiencies communicated to him by Prugh.

16 25. At the March 9th meeting with Craven, Bill not only reinforced his concerns about
17 Prugh's competence and the harassment which he considered Prugh's conduct represented,
18 but additionally lodged specific complaints about CUBIC's C&GSC program in Tbilisi
19 which directly violated specific requirements of the Statement of Work as enumerated in
20 CUBIC's C&GSC contract W91 CRB-14-C-0020-CGSC with the U.S. government. In
21 addition to lodging complaints about specific issues in which CUBIC's protocols fell short
22 of meeting the standards encompassed in the Statement of Work, Bill provided Craven with
23 a several-page outline enumerating proposed actions which could and should be taken by
24 C&GSC to rectify its shortcomings which, if not accomplished to rectify CUBIC's non-
25 compliance, Bill warned could be detrimental to CUBIC's world-wide contracts with the
26 U.S. government, as well as those in Georgia.

27 26. On or about March 11, 2015, Bill again met with Prugh who commented on the age
28 difference between himself, who was in his early 50's and had served in Desert Storm, and

1 Bill, who was 69 years old and who began his military service during the Vietnam era,
2 articulating that there was a vast difference between those who served in military
3 campaigns decades removed.

4 27. On or about March 16, 2015, in compliance with CUBIC's complaint procedures,
5 Bill submitted a formal complaint to CUBIC's HR Department when Craven advised that
6 he had not completed his alleged investigation of Bill's complaints following receipt of
7 Bill's written complaints on March 16th and their in-person meeting on March 9, 2015.

8 28. On or about March 18, 2015, Bill resubmitted his original complaint when no
9 confirmation of receipt was received by CUBIC's HR Department. Thereafter, the HR
10 Department allegedly conducted an investigation, but interviewed only C&GSC senior staff
11 (Craven, Prugh) and their military superior and Program Director, Ken Blanford, who
12 resided and worked in Virginia and had met Bill Wenger on only a single occasion at an
13 orientation meeting in May 2014, at which time no conversation between the two men took
14 place.

15 29. On or about April 27, 2015, without benefit of formal counseling, written warning
16 or the issuance of a performance improvement plan and within six weeks of Bill's written
17 and verbal complaints about the incompetence of Prugh, his request that Prugh be replaced
18 as Team Leader and his submission of substantive proof that CUBIC was out of compliance
19 with the mandated Statement of Work encompassed in CUBIC's C&GSC government
20 contract, CUBIC summarily terminated Bill, effective May 6, 2015, with his departure from
21 Tbilisi, Georgia.

22 30. CUBIC alleges that it terminated Bill at the request of its "customer", the Georgian
23 Armed Forces, which allegedly recommended Bill's removal from the C&GSC due to
24 performance issues. The GAF request was allegedly made by LTC. Irodi Kadagishvili
25 (who has since been relieved of duty) in a letter dated **April 20, 2015**, authored more than
26 one month **after** Bill complained to C&GSC's Program Director, Bill Craven, concerning
27 Prugh's leadership and CUBIC's violation of its contractual relationship with the U.S.
28 Government, complaints which replicated concerns Bill had voiced for months without

1 response from CUBIC and without modifications in the C&GSC teaching protocols or
2 reporting responsibilities.

3 31. CUBIC's contention that Bill's termination was reliant on complaints by Georgian
4 instructors and students is contradicted by multiple accolades received from Bill from both
5 Georgian instructors and students as to the quality of his presentations and the depth of his
6 knowledge of the subject matter.

7 32. Furthermore, CUBIC's contention that it terminated Bill at the request of its
8 "customer" is disingenuous, insofar as the "customer" for CUBIC's contract services at the
9 C&GSC in Tbilisi was the U.S. Government and the U.S. State Department who funded the
10 CUBIC contract. The services performed by CUBIC pursuant to the terms of the C&GSC
11 contract were supervised directly by the Chief of the Office of Defense Coordination and
12 all reports and advisories required by CUBIC's contracts were directed only to the Chief of
13 the Office of Defense Coordination with a copy to the Defense Attache at the U.S. Embassy
14 in Tbilisi, and **not** to CUBIC's purported "customer", the Georgian Armed Forces. GAF
15 officers never supervised or directed any C&GSC CUBIC employees, their preparation or
16 execution of their work.

17 33. CUBIC further alleges that unless it terminated Bill at the "request" of the GAF that
18 it could risk the reduction of its contracts for C&GSC staffing. Contrary to that contrived
19 reasoning, downsizing had been a topic of discussion since the inception of CUBIC's
20 C&GSC contract, but was never implemented due to CUBIC's insistence that a minimum
21 5-instructor staff was necessary to properly supervise and execute all aspects of the contract
22 Statement of Work.

23 34. Bill Wenger was not terminated for the disingenuous reason that he was not
24 qualified to instruct the Georgian military when he possessed more extensive military and
25 peace-time training, formal education, command experience and combat, as well as uniform
26 combat advisory experience, than *any* staff member stationed in Tbilisi, including both Bill
27 Craven and Dave Prugh. Bill Wenger was terminated in retaliation for voicing complaints
28 not only about the hostile work environment created by Dave Prugh, but for submitting

1 substantive proof that CUBIC was out of compliance with the mandated Statement of
2 Work encompassed in CUBIC's C&GSC contract with the United States government and
3 not performing pursuant to its contractual obligations with the U.S. government.

4 35. On or about August 10, 2015, Plaintiff filed a complaint with the Department of Fair
5 Employment and Housing against all CUBIC entities named in this Complaint.

6 36. On or about August 10, 2015, Plaintiff received a Right to Sue Letter from DFEH as
7 to all named CUBIC defendants, a true and correct copy of which is attached hereto as
8 **Exhibit 1** and incorporated herein by reference.

9 **FIRST CAUSE OF ACTION**

10 **(For Retaliatory Discharge pursuant to *Labor Code* §1102.5 Against All Defendants)**

11 37. Plaintiff realleges and incorporates herein all of the allegations set forth in
12 paragraphs 1 through 36 as though fully set forth herein.

13 38. Plaintiff invokes *California Labor Code* §1102.5, an anti-retaliation provision,
14 which provides that no employer shall prevent an employee who reasonably believes that a
15 violation of laws has occurred from reporting on the unlawful business practices. *Labor*
16 *Code* §1102.5 specifically protects employees from retaliation who disclose information
17 regarding alleged violations "to a person with authority over the employee or another
18 employee who has authority to investigate, discover or correct the violation or
19 noncompliance."

20 39. As alleged herein, the CUBIC defendants are charged with retaliating against
21 Plaintiff because he reported to management specific instances of falsification of CUBIC
22 reports to their contractual partner, the United States government, which represented that
23 CUBIC was not performing pursuant to the standards encompassed in the Statement of
24 Work and, thus, in violation of its contractual obligations to the U.S. government.

25 40. Instead of investigating Plaintiff's whistleblower complaints and taking action to
26 rectify violations of their contractual obligations with no less a partner than the United
27 States government, CUBIC instead retaliated against Plaintiff for his whistleblower
28 activities.

1 41. As a proximate result of Defendant's retaliation, Plaintiff has sustained and
2 continues to sustain substantial loss in past, present and future earnings, career
3 opportunities, and other employment benefits in amounts to be proven at trial. Plaintiff's
4 damages include all consequential, general and special economic damages in amounts to be
5 proven at trial.

6 42. As a further proximate result of Defendant's retaliatory conduct, Plaintiff has
7 suffered and continues to suffer humiliation, severe emotional distress and mental and
8 physical pain and anguish, all to his damage in a sum according to proof.

9 **SECOND CAUSE OF ACTION**

10 **(FEHA Retaliation Against All Defendants)**

11 43. Plaintiff realleges and incorporates herein all of the allegations set forth in
12 paragraphs 1 through 42 as though fully set forth herein.

13 44. Plaintiff believes and thereon alleges that Defendants' adverse actions taken against
14 him as set forth herein occurred in retaliation for Plaintiff reporting to CUBIC violations of
15 their contractual obligations to the United States government as represented in falsification
16 of reports and failure to perform in compliance with the mandate of the Statement of Work
17 encompassed in CUBIC's government contracts. Such retaliatory actions are unlawful,
18 discriminatory and retaliatory in violation of CALIFORNIA GOVERNMENT CODE
19 §12940 et seq. and have resulted in damages and injury to Plaintiff as alleged herein.

20 45. As a proximate result of Defendant's retaliation, Plaintiff has sustained and
21 continues to sustain substantial loss in past, present and future earnings, career
22 opportunities, and other employment benefits in amounts to be proven at trial. Plaintiff's
23 damages include all consequential, general and special economic damages in amounts to be
24 proven at trial.

25 46. As a further proximate result of Defendants' retaliatory acts, Plaintiff has suffered
26 and continues to suffer humiliation, severe emotional distress and mental and physical pain
27 and anguish, all to his damage in a sum according to proof.

28 47. The foregoing acts of Defendants were oppressive, malicious, and despicable, and

1 Plaintiff is, therefore, entitled to an award of punitive damages against Defendants in an
2 amount to be proven at trial.

3 **THIRD CAUSE OF ACTION**

4 **(For Age Discrimination Against All Defendants)**

5 48. Plaintiff realleges and incorporates herein all of the allegations set forth in
6 paragraphs 1 through 47 as though fully set forth herein.

7 49. This cause of action is brought pursuant to CALIFORNIA GOVERNMENT CODE
8 §12940(a) which prohibits discrimination against a person in terms, conditions or privileges
9 of employment on the basis of age, and the corresponding regulations of the California Fair
10 Employment and Housing Commission, or its successor.

11 50. At all times herein mentioned, the CUBIC defendants, jointly and independently,
12 employed five or more persons, bringing said employer defendants within the provision of
13 CALIFORNIA GOVERNMENT CODE §12900 et seq., prohibiting employers or their
14 agents from discriminating against employees on the basis of age.

15 51. Plaintiff was 68 years old when terminated by Defendants and is, therefore, a
16 member of a protected class within the meaning of the aforementioned Government Code
17 sections. At all relevant times herein, Plaintiff satisfactorily performed his duties and
18 responsibilities as expected by Defendants and, in fact, exceeded those expectations by his
19 performance.

20 52. Plaintiff alleges that on April 27, 2015 and May 6, 2015, the CUBIC defendants
21 wrongfully retaliated against him, discriminated against him, and terminated him on the
22 basis of age.

23 53. As a proximate result of Defendant's retaliation, Plaintiff has sustained and
24 continues to sustain substantial loss in past, present and future earnings, career
25 opportunities, and other employment benefits in amounts to be proven at trial. Plaintiff's
26 damages include all consequential, general and special economic damages in amounts to be
27 proven at trial.

28 54. As a further proximate result of Defendants' discriminatory conduct, Plaintiff has

1 suffered and continues to suffer humiliation, severe emotional distress and mental and
2 physical pain and anguish, all to his damage in a sum according to proof.

3 55. The foregoing acts of Defendants were oppressive, malicious, and despicable, and
4 Plaintiff is, therefore, entitled to an award of punitive damages against Defendants in an
5 amount to be proven at trial.

6 **FOURTH CAUSE OF ACTION**

7 **(For Harassment Against All Defendants)**

8 56. Plaintiff realleges and incorporates herein all of the allegations set forth in
9 paragraphs 1 through 55 as though fully set forth herein.

10 57. This cause of action is brought pursuant to *Government Code* §12940(j) which
11 prohibits harassment in the workplace which creates a hostile work environment in terms,
12 conditions or privileges of employment, and the corresponding regulations of the California
13 Fair Employment and Housing Commission, or its successor.

14 58. At all times herein mentioned, the CUBIC defendants regularly employed five or
15 more persons, bring said employer defendants within the provision of CALIFORNIA
16 GOVERNMENT CODE §12900 et seq., prohibiting employers or their agents from
17 engaging in harassing conduct which creates a hostile work environment.

18 59. As described herein, Plaintiff was subjected to harassing conduct by CUBIC
19 employee Dave Prugh in his supervisory capacity which was pervasive and severe,
20 culminating in Plaintiff's unjustified, abrupt and fabricated termination which Defendant,
21 in his capacity as Program Team Leader in Tbilisi, manipulated and caused to occur, all to
22 Plaintiff's detriment.

23 60. As a proximate result of the harassing conduct of CUBIC and Prugh, Plaintiff has
24 sustained and continues to sustain substantial loss in past, present and future earnings,
25 career opportunities, and other employment benefits in amounts to be proven at trial.
26 Plaintiff's damages include all consequential, general and special economic damages in
27 amounts to be proven at trial.

28 61. As a further proximate result of the harassing conduct of CUBIC and Prugh,

1 Plaintiff has suffered and continues to suffer humiliation, severe emotional distress and
2 mental and physical pain and anguish, all to his damage in a sum according to proof.

3 62. The foregoing acts of Defendants were oppressive, malicious, and despicable, and
4 Plaintiff is, therefore, entitled to an award of punitive damages against Defendant in an
5 amount to be proven at trial.

6 **FIFTH CAUSE OF ACTION**

7 **(For Failure to Prevent Discrimination and Harassment Against All Defendants)**

8 63. Plaintiff realleges and incorporates herein all of the allegations set forth in
9 paragraphs 1 through 62 as though fully set forth herein.

10 64. The CUBIC defendants had a statutory duty, pursuant to CALIFORNIA
11 GOVERNMENT CODE §12940(k) to take all reasonable steps necessary to prevent
12 discrimination and harassment from occurring in the workplace.

13 65. The CUBIC defendants breached their statutory duty of care to Plaintiff by failing to
14 take all reasonable steps necessary to prevent the discrimination experienced by Plaintiff
15 and to prevent the discrimination and harassment he suffered at the hands of Prugh,
16 ultimately resulting in his wrongful termination.

17 66. As a proximate result of Defendant's discriminatory and harassing conduct, Plaintiff
18 has sustained and continues to sustain substantial loss in past, present and future earnings,
19 career opportunities, and other employment benefits in amounts to be proven at trial.
20 Plaintiff's damages include all consequential, general and special economic damages in
21 amounts to be proven at trial.

22 67. As a further proximate result of the wrongful conduct of CUBIC, Plaintiff has
23 suffered and continues to suffer humiliation, severe emotional distress and mental and
24 physical pain and anguish, all to his damage in a sum according to proof.

25 68. The foregoing acts of Defendants were oppressive, malicious, and despicable, and
26 Plaintiff is, therefore, entitled to an award of punitive damages against Defendant in an
27 amount to be proven at trial.

28 ///

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

SIXTH CAUSE OF ACTION

(For Wrongful Termination in Violation of Public Policy Against All Defendants)

69. Plaintiff realleges and incorporates herein all of the allegations set forth in paragraphs 1 through 68 as though fully set forth herein.

70. On April 27 and May 6, 2015, Bill was 68 years old.

71. At all times herein mentioned, there existed fundamental and established California public policies, as codified by case law and statute, including but not limited to: (a) CALIFORNIA GOVERNMENT CODE §12940(a); (b) CALIFORNIA LABOR CODE §1102.5; (c) CALIFORNIA GOVERNMENT CODE §12940(h); (d) CALIFORNIA GOVERNMENT CODE §12940(j); and (e) CALIFORNIA GOVERNMENT CODE §12940(k).

72. On or about April 27 and May 6, 2015, the CUBIC defendants violated the California public policies by wrongfully terminating Bill on the basis of his age; by terminating Bill in retaliation for his whistleblower activities; for terminating Bill in retaliation for his opposition to CUBIC’s discriminatory and harassing conduct; and by failing to prevent discrimination and harassment toward Bill.

73. As a proximate result of Defendant’s wrongful termination in violation of public policy of the State of California, Plaintiff has sustained and continues to sustain substantial loss in past, present and future earnings, career opportunities, and other employment benefits in amounts to be proven at trial. Plaintiff’s damages include all consequential, general and special economic damages in amounts to be proven at trial.

74. As a further proximate result of the wrongful conduct of CUBIC, Plaintiff has suffered and continues to suffer humiliation, severe emotional distress and mental and physical pain and anguish, all to his damage in a sum according to proof.

75. The foregoing acts of Defendants were oppressive, malicious, and despicable, and Plaintiff is, therefore, entitled to an award of punitive damages against Defendant in an amount to be proven at trial.

///

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

DEMAND FOR TRIAL BY JURY

76. Plaintiff hereby demands a trial by jury.

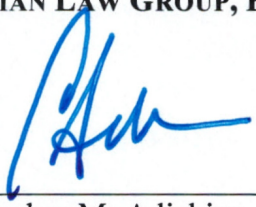
PRAYER FOR RELIEF

WHEREFORE, Plaintiff WILLIAM V. WENGER prays for judgment as follows:
FOR ALL CAUSES OF ACTION:

- 1. Compensatory damages, including loss of wages (front and back pay), career opportunities, benefits and other opportunities of employment;
- 2. Special damages in a sum to be proven at trial;
- 3. Punitive damages in a sum to be proven at trial;
- 4. Interest, including pre-judgment interest, thereon at the legal rate, including but not limited to CIVIL CODE §3291;
- 5. Attorney’s fees according to proof, pursuant to CALIFORNIA GOVERNMENT CODE §12965, or other applicable statutes or contracts;
- 6. Costs of suit incurred herein; and
- 7. Such other and further relief as to the Court may seem just and proper.

Dated: 2/23/16

ADISHIAN LAW GROUP, P.C.

By: 

Christopher M. Adishian
Attorney for Claimant
William V. Wenger

EXHIBIT 1

EXHIBIT 1



DEPARTMENT OF FAIR EMPLOYMENT & HOUSING

2218 Kausen Drive, Suite 100 | Elk Grove | CA | 95758
800-884-1684 | TDD 800-700-2320
www.dfeh.ca.gov | email: contact.center@dfeh.ca.gov

DIRECTOR KEVIN KISH

August 10, 2015

Chris Adishian
222 N. Sepulveda Blvd., Ste. 2000
El Segundo California 90245

RE: Notice to Complainant or Complainant's Attorney

DFEH Matter Number: 608788-170354

Right to Sue: Wenger / Cubic Applications, Inc.

Dear Complaint or Complainant's Attorney:

Attached is a copy of your complaint of discrimination filed with the Department of Fair Employment and Housing (DFEH) 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, DFEH will not serve these documents on the employer. You or your attorney must serve the complaint. If you do not have an attorney, you must serve the complaint yourself. 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.

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

Sincerely,

Department of Fair Employment and Housing



DEPARTMENT OF FAIR EMPLOYMENT & HOUSING

2218 Kausen Drive, Suite 100 | Elk Grove | CA | 95758
800-884-1684 | TDD 800-700-2320
www.dfeh.ca.gov | email: contact.center@dfeh.ca.gov

DIRECTOR KEVIN KISH

August 10, 2015

RE: Notice of Filing of Discrimination Complaint

DFEH Matter Number: 608788-170354

Right to Sue: Wenger / Cubic Applications, Inc.

To All Respondent(s):

Enclosed is a copy of a complaint of discrimination that has been filed with the Department of Fair Employment and Housing (DFEH) 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. This case is not being investigated by DFEH and is being closed immediately. A copy of the Notice of Case Closure and Right to Sue is enclosed for your records.

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

No response to DFEH is requested or required.

Sincerely,

Department of Fair Employment and Housing



DEPARTMENT OF FAIR EMPLOYMENT & HOUSING

2218 Kausen Drive, Suite 100 | Elk Grove | CA | 95758
800-884-1684 | TDD 800-700-2320
www.dfeh.ca.gov | email: contact.center@dfeh.ca.gov

DIRECTOR KEVIN KISH

August 10, 2015

William Wenger
1317 E. Grand Avenue, Unit D
El Segundo, California 90245

RE: Notice of Case Closure and Right to Sue
DFEH Matter Number: 608788-170354
Right to Sue: Wenger / Cubic Applications, Inc.

Dear William Wenger,

This letter informs you that the above-referenced complaint was filed with the Department of Fair Employment and Housing (DFEH) has been closed effective August 10, 2015 because an immediate Right to Sue notice was requested. DFEH will take no further action on the complaint.

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.

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

Sincerely,

Department of Fair Employment and Housing



STATE OF CALIFORNIA | Business, Consumer Services and Housing Agency

GOVERNOR EDMUND G. BROWN JR.

DEPARTMENT OF FAIR EMPLOYMENT & HOUSING

2218 Kausen Drive, Suite 100 | Elk Grove | CA | 95758
800-884-1684 | TDD 800-700-2320
www.dfeh.ca.gov | email: contact.center@dfeh.ca.gov

DIRECTOR KEVIN KISH

Enclosures

cc: Cubic Corporation

Cubic Global Defense, Inc.

Cubic Defense Applications, Inc.

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

6 In the Matter of the Complaint of
7 William Wenger, Complainant.
8 1317 E. Grand Avenue, Unit D
9 El Segundo,, California 90245

DFEH No. 608788-170354

9 vs.

10 Cubic Applications, Inc. Respondent.
11 9333 Balboa Avenue
12 San Diego, California 92123

13
14 Complainant alleges:

15 1. Respondent **Cubic Applications, Inc.** is a **Private Employer** subject to suit under the California Fair
16 Employment and Housing Act (FEHA) (Gov. Code, § 12900 et seq.). Complainant believes respondent is
17 subject to the FEHA.

18 2. On or around **May 06, 2015**, complainant alleges that respondent took the following adverse actions against
19 complainant: **Discrimination, Harassment, Retaliation Asked impermissible non-job-related questions,**
20 **Demoted, Denied a good faith interactive process, Denied a work environment free of discrimination**
21 **and/or retaliation, Denied continuation of employer-paid health care coverage while on pregnancy**
22 **disability leave, Denied employment, Denied equal pay, Denied family care or medical leave, Denied or**
forced to transfer, Denied pregnancy leave, Denied promotion, Denied reasonable accommodation,
Denied reinstatement, Denied the right to wear pants, Forced to quit, Laid-off, Terminated, Tested for
genetic characteristics, Other, other as revealed during discovery. Complainant believes respondent
committed these actions because of their: **Age - 40 and over, Ancestry, Association with a member of a**
protected class, Color, Disability, Engagement in Protected Activity, Family Care or Medical Leave,
Genetic Information or Characteristics, Marital Status, Medical Condition - including Cancer, National
Origin - including language use restrictions, Race, Religion, Sex- Gender, Sex - Gender identity or
Gender expression, Sex - Pregnancy, Sexual Orientation, Other other as revealed during discovery.

3. Complainant **William Wenger** resides in the City of **El Segundo**, State of **California**. If complaint includes
co-respondents please see below.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22

Co-Respondents:

Cubic Corporation
9333 Balboa Avenue
San Diego California 92123

Cubic Global Defense, Inc.
9333 Balboa Avenue
San Diego California 92123

Cubic Defense Applications, Inc.
9333 Balboa Avenue
San Diego California 92123

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22

Additional Complaint Details:

The following is stated upon information and belief. Mr. Wenger was in several protected classes at the time of his termination, including but not limited to age and disability. His termination followed his complaint to his employer that the employer was falsifying reports to its customer, the United States government, mis-representing its compliance with contractual requirements. Respondent employer never engaged in a good faith, interactive process. Respondent employer failed to provide a reasonable accommodation. Respondent employer harassed and discriminated against Mr. Wenger based upon his membership in these protected classes and/or based upon his engagement in a protected activity. Respondent never adequately investigated Mr. Wengers whistleblower complaints, or complaints of discrimination and harassment, but instead terminated him.

1 VERIFICATION

2 I, **Chris Adishian**, am the Attorney for Complainant in the above-entitled complaint. I have read the foregoing
3 complaint and know the contents thereof. The same is true of my own knowledge, except as to those matters
4 which are therein alleged on information and belief, and as to those matters, I believe it to be true.

5 On August 10, 2015, I declare under penalty of perjury under the laws of the State of California that the
6 foregoing is true and correct.

7 **El Segundo, California**
8 **Chris Adishian**

9
10
11
12
13
14
15
16
17
18
19
20
21
22